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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 43

**DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES**

JANUARY, 1917, TO APRIL, 1917

REPORTED BY THE COMMISSION



**WASHINGTON
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1917**



INTERSTATE COMMERCE COMMISSION.

HENRY C. HALL, Chairman.

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CHARLES C. McCHORD.

BALTHASAR H. MEYER.

WINTHROP M. DANIELS.

GEORGE B. McGINTY, *Secretary.*

March 17, 1917, COMMISSIONER MEYER's term as chairman expired; on that date COMMISSIONER HALL became chairman.

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 8679.¹

E. I. DU PONT DE NEMOURS POWDER COMPANY

v.

PHILADELPHIA & READING RAILWAY COMPANY.

Submitted June 26, 1916. Decided January 22, 1917.

Rates charged for the transportation of ashes, cinders, and foundry dirt in March and April, 1915, from Reading, Birdsboro, and Coatesville, Pa., Rockford and Wilmington, Del., to Carney's Point, N. J., found unreasonable. Rates subsequently established found reasonable. Reparation awarded.

Harvey S. Farrow for complainant.

William L. Kinter for Philadelphia & Reading Railway Company.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

Complainant herein is a corporation engaged in the manufacture of explosives at Carney's Point, N. J., and various other places. By complaint, filed January 28, 1916, subcomplaints Nos. 1 and 2 filed January 29, 1916, Nos. 3, 4, and 5 filed February 5, 1916, and Nos. 6 and 7 filed March 28, 1916, the sixth-class rates of 12.5, 11.6, and 8.4 cents per 100 pounds charged by defendant Philadelphia & Reading Railway, during March and April, 1915, for the transportation of coal ashes, cinders, and foundry dirt from Reading, Birdsboro, and Coatesville, Pa., respectively, and the rate of 7.4 cents from Rockford and Wilmington, Del., to Carney's Point, N. J., were alleged to be unjust and unreasonable to the extent that they exceeded the subsequently established rates of \$1 per net ton from Reading and Birdsboro, Pa., 80 cents from Coatesville, Pa., 70 cents from Rockford, Del., and 60 cents from Wilmington, Del., on

¹ The proceeding also embraces complaints in—No. 8679 (Sub-Nos. 1 to 5, inclusive), *Same v. Same*; No. 8679 (Sub-No. 6), *E. I. du Pont de Nemours Powder Company v. Philadelphia & Reading Railway Company et al.*; and No. 8679 (Sub-No. 7), *Same v. Same*.

local traffic and 80 cents on traffic received at Wilmington from connecting lines. Reparation is asked on the basis of the subsequently established commodity rates on all shipments which moved during the period in which the class rates applied.

Carney's Point is on the New Jersey side of the Delaware River nearly opposite Wilmington. It is served by the Pennsylvania Railroad directly and by the Philadelphia & Reading Railway through a car float or lighterage service from Wilmington. While the actual distance from Wilmington to Carney's Point is approximately 5 miles, the table of distances of the Philadelphia & Reading Railway gives to this haul a constructive or arbitrary length of 30 miles.

During the spring of 1915 in the course of construction of some new railroad sidings and yards at complainant's plant at Carney's Point, it was found necessary to secure considerable tonnage of coal ashes, foundry dirt, and cinders for the purpose of filling. There were no commodity rates on these articles in effect from any of the shipping points named to Carney's Point at the time the necessity arose, and the sixth-class rates, as above stated, were applied. Application was made to the Philadelphia & Reading Railway for commodity rates on these articles, and such rates were established from Reading, Birdsboro, Coatesville, and Wilmington on local traffic on April 4, 1915; from Rockford on April 24, 1915; and from Wilmington on traffic received from connecting lines on May 28, 1915. The necessity for quick construction, however, was so urgent that the complainant shipped 50 cars from Reading, 4 cars from Rockford, 7 cars from Birdsboro, 6 cars from Coatesville, and 82 cars from Wilmington prior to the establishment of the commodity rates. Seventy-eight of the 82 cars received from Wilmington were delivered to the Philadelphia & Reading by the Baltimore & Ohio and the Pennsylvania railroads, while 4 cars were local traffic.

The class rates applied were so much higher than the commodity rates subsequently established, and so much higher than the commodity rates then in effect between other points on the Philadelphia & Reading Railway for comparable distances, that this complaint was filed for recovery of the difference between the charges paid and the charges that would have been paid had the commodity rates been in effect when the shipments moved. It was shown that coal ashes, cinders, and foundry dirt are articles of little or no intrinsic worth, and that they ordinarily move only to points at which construction of some kind is going on. Their movement in large quantities is sporadic. When the construction at a given point is completed, ordinarily the movement to such a point ceases. They rarely can move, or do move, on class rates for the reason that ordinarily, and unless some low basis of rates is provided, some other material will be substituted.

Complainant referred to Philadelphia & Reading Railway tariff I. C. C. No. J-5010, showing rates on coal ashes, cinders, and refuse from and to a large number of points on the Philadelphia & Reading Railway. The rates shown in this tariff are stated in cents per ton of 2,000 pounds. The following examples appear to be illustrative of the level of these commodity rates:

From Philadelphia, Pa., to—	Miles.	Rate.	From Philadelphia, Pa., to—	Miles.	Rate.
Ocean City, N. J.....	67	\$1.16	Quakertown, Pa.....	40.2	\$0.84
Atlantic City, N. J.....	58	1.16	Telford, Pa.....	30.9	.79
South Bethlehem, Pa.....	56.6	.95	Glenside, Pa.....	11.9	.53
Center Valley, Pa.....	47.6	.89			

It should be noted that the haul from Philadelphia to Ocean City and Atlantic City involves a car float or lighterage service between Philadelphia and Camden, N. J.

Using the constructive mileage given by the Philadelphia & Reading Railway in its distance tariff from Wilmington to Carney's Point, the distances from the respective points of shipment, the class rates reduced to rates per ton of 2,000 pounds and the present commodity rates are as follows:

To Carney's Point from—	Miles.	Class rate.	Commodity rate.	Commodity rate on traffic received from connecting lines.
Wilmington.....	30	\$1.48	\$0.60	\$0.80
Rockford.....	39	1.48	.70	.....
Coatesville.....	63	1.68	.80	.....
Birdsboro.....	94	2.32	1.00	.....
Reading.....	104	2.50	1.00	.....

It is clear from the testimony of the complainant, the statement of the defendant Philadelphia & Reading Railway, and from an examination of the tariff to which reference has been given that the class rates applied on these shipments are out of proportion to the rates that are ordinarily applied in the same territory for the transportation of these articles. The statement of the representative of the carrier was to the effect that the commodity rates subsequently established represented the judgment of the carrier as to the level of the rates that should be applied on shipments of this character.

Upon the whole record we are of the opinion and find that the class rates applied during the month of March and a portion of the month of April, 1915, by the Philadelphia & Reading Railway for the transportation of ashes, cinders, and foundry dirt from Read-

ing, Birdsboro, Coatesville, Rockford, and Wilmington to Carney's Point were unreasonable to the extent that they exceeded the subsequently established commodity rates hereinbefore named.

We further find that complainant paid and bore the charges on the shipments described in the complaint at the rates herein found unreasonable, and has been damaged by the difference between the charges paid and the charges that would have been paid had the subsequently established commodity rates been in effect at the time said shipments moved.

We further find that complainant is entitled to reparation in the sum of \$4,871.84, with interest. An order awarding reparation will be entered, but since the commodity rates have been in effect over the route of movement for from 18 to 20 months, and the necessity for their use has ceased, no order will be entered for the future.

Answering subcomplaint No. 6, the Pennsylvania Railroad Company and the Philadelphia, Baltimore & Washington Railroad Company deny that they collected, received, and retained any portion of the charges complained of. As there seems to be no evidence to the contrary, these carriers will not be included in the order for reparation.

In subcomplaint No. 7, the Baltimore & Ohio Railroad is named as codefendant; but as it is admitted in the complaint that the charge of the latter carrier from Philadelphia, Pa., to Wilmington, Del., the interchange point, is reasonable, the order for reparation will not run against the Baltimore & Ohio Railroad.

INVESTIGATION AND SUSPENSION DOCKET No. 930.
EASTERN EXPORT IRON AND STEEL CASE.

Submitted January 3, 1917. Decided January 22, 1917.

Proposed cancellation of, or increases in, export rates on iron and steel from points in central freight association and trunk line territories to Atlantic ports and from points in central freight association territory to Gulf ports found not justified as a whole, but carriers authorized to apply present domestic rates on export traffic from Pittsburgh to the Atlantic seaboard provided Chicago, Ill., Cincinnati, Ohio, and other points in central freight association territory are given rates to the seaboard properly adjusted with reference thereto. Proposed schedules here in issue to be held under suspension until new tariffs are filed in accordance with our views.

George Stuart Patterson for trunk lines and central freight association lines.

Ernest S. Ballard, Frederick L. Ballard, W. N. King, and T. H. Burgess for respondents.

H. S. Allen and W. L. Louis for Elgin, Joliet & Eastern Railway Company.

Dudley G. Gray for Western Maryland Railway Company.

F. G. Banister for lines to Gulf ports.

Francis B. James and Allan R. Campbell for Pollak Steel Company.

Charles S. Belsterling for United States Steel Corporation and its subsidiaries.

C. L. Lingo for Inland Steel Company.

D. B. Hayes for Adrian Fence Company and Peerless Fence Company.

A. E. Singleton for Whitaker-Glessner Company, Iron-ton-Ashland Manufacturers Association, and American Rolling Mill Company.

Tracy H. Duncan for Corrigan, McKinney & Company.

E. H. Smith for Andrews Steel Company and Newport Rolling Mill Company.

W. E. Long for Manufacturers Association of Sterling, Ill.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The respondents, by schedules filed to become effective October 1 and November 1, 1916, proposed to cancel their export commodity rates on pig iron, billets, and manufactured iron and steel articles from producing points in central freight association and trunk line

territories to the Atlantic ports and to apply their domestic rates instead. The export rates are about 66 $\frac{2}{3}$ per cent of the domestic rates. The export rates from Cincinnati, Ohio, St. Paul, Minn., Chicago, Ill., St. Louis, Mo., and several other points in Indiana, Wisconsin, Iowa, Michigan, Kentucky, and Illinois to the Gulf ports were also proposed to be canceled or increased effective October 1. These rates, however, are fixed by the rates to the Atlantic seaboard. Since they are made to equalize the Gulf ports with the seaboard, as a practical matter they must stand or fall with the rates to the seaboard, and will not be here dealt with specifically. The first suspension of the schedules expires January 29, 1917.

Until late in 1903 such export traffic as there was in iron and steel moved to the seaboard at domestic rates. Depressed business conditions about that time led 13 of the largest manufacturers to petition the carriers for a reduction of at least 50 per cent in the rates to assist them in developing their foreign trade, particularly in South America, the West Indies, along the Mediterranean, and in the Orient, and to enable them to distribute their overhead charges over a larger total output. Such lower rates were represented to be necessary because of the fact that the producers in England, France, Germany, and Belgium, with cheaper labor than could be had in this country, were then in control of the foreign markets in which the American industries desired to compete. The carriers refused to establish rates on the basis asked but promptly provided rates one-third less than their domestic rates. This action was deemed by them to be a concession in the common interest of the carriers and the shippers. Counsel for one of the protestants suggested upon the hearing, but it was denied by respondents, that the reduction so made, in a measure, at least, was intended to take the place of the rebates or concessions that had probably been granted before the Elkins act became effective on February 19, 1903. In any event the carriers state now that the export rates were deemed to be little if anything more than necessary to meet the cost of service, and as evidence of this fact point out that the lines to Philadelphia, Pa., and to Baltimore, Md., instead of protecting those ports with rates, respectively, 2 cents and 3 cents below the rates to New York, as was their fixed policy, shrunk the differentials 50 per cent. It is suggested that in some cases at least the traffic was given up to the most direct lines operating from the mills to the seaboard. The increased traffic in lime, coal, coke, and ore into the producing points and the additional merchandise and passenger traffic which was expected to grow out of the greater activity of the industries were largely relied on to make the reductions in the rates on iron and steel redound to the carriers' advantage.

The first tariffs published on export traffic were to expire by their own limitation within a year, but were amended from time to time so as to continue the maintenance of the reduced rates until 1907. At that time, because of this Commission's objection to tariffs containing provisions as to their temporary character, the export rates were published without the expiration notices.

The maintenance of export rates on iron and steel is admitted now to be a settled policy, but it is not intended as one to be adhered to during the existence of unusual conditions. The reasons given by respondents for the proposed cancellation of their export rates is the cessation of the conditions which gave rise to their establishment. The countries from which the competition came are now at war, and the producers therein, although still exporting to some extent to South America and the Orient, are said to be confining themselves mainly to contracts for their own governments.

The prices of iron and steel have materially increased in recent years. In 1904 pig iron sold for from \$12.40 to \$16.65 per ton. In 1916 the average price was \$26.64. Billets in 1904 cost from \$19.50 to \$23 per ton. In June, 1916, the price was \$55.25. Bar iron in 1904 was selling at from 1.3 to 1.5 cents per pound, but in June, 1916, the average was 2.48 cents per pound.

Congestion at the seaboard during the past year has at times necessitated the embargoing of iron and steel for export. Certain shippers to defeat the embargoes resorted to the practice of billing their shipments to the ports as for domestic use and in less than carloads, and after having gotten them there at domestic rates delivered them to the steamships through their own agencies, bearing the teaming expense in some cases from points as far away as Newark, N. J. In other cases shipments were consigned to certain points intermediate to the seaboard against which there were no embargoes, and subsequently were reconsigned to the ports on the basis of the combination of local rates to and from the reconsigning points. These things have been done in the face of increased ocean rates, and respondents put them before us as evidencing changed conditions.

Since the outbreak of the war the export business in iron and steel has grown by leaps and bounds. Respondents, having in mind the enormous quantities of war material that are now moving, feel that the continued maintenance of the present export rates means a serious loss of revenue that they are justly entitled to receive and which they think they are entitled to enjoy without detriment to the shippers. Carriers regard the domestic rates as reasonable and are of opinion that the export traffic will move as freely on the domestic rates as on the export rates as long as present conditions continue.

The increased ocean rates do not appear to have retarded the movement in the least.

Respondents, while they naturally refuse definitely to commit themselves as to their future policy, say that when conditions again justify a readjustment they are willing to confer with the shippers and to make such reductions as may appear necessary for their mutual advantage. At a meeting of the traffic officials of the carriers held prior to the publication of the proposed tariffs it was definitely understood "that the principle of making lower rates on export traffic than on domestic traffic is not denied."

Respondents announced early last spring that they were considering the advisability of canceling the export rates on iron and steel. August 1, 1916, was first selected as the date on which the domestic rates were to be made applicable. In May, 1916, there was a conference on the subject between the traffic officials of the carriers and of the United States Steel Corporation, its subsidiaries, and several other large producers, representing possibly 98 per cent of the iron and steel tonnage of the country. It was then understood that there would be no particular objection to the cancellation, provided the effective date thereof was postponed until January 1, 1917, so as to enable the shippers to fill their existing contracts without detriment. The understanding is claimed by one of the shippers to have been in the nature of a compromise, and not a specific approval of the measure of the domestic rates to be used on export traffic. The carriers met the shippers halfway and postponed the effective date of the cancellation until October 1, 1916.

The shippers upon the hearing offered evidence as to the financial condition of the carriers and submitted data to show that owing to the heavy loading of iron and steel the earnings of the carriers, even under the export rates, were amply remunerative. The opinion was expressed by several of their witnesses that the domestic rates were unreasonable. The domestic rates on pig iron and billets are commodity rates which are less than sixth class. The domestic rates on manufactured iron and steel are fifth class from central freight association territory generally, but from Pittsburgh and certain related points there are commodity rates which are somewhat lower than the class rates. As we understand it, the domestic rates to the seaboard are, as a rule, upon practically the same level as applies generally in official classification territory. The record indicates that the average loading on the export traffic may be somewhat greater than on domestic traffic, but upon the whole, owing to the greater free time allowance on export traffic at the ports under demurrage tariffs, there is probably very little difference in the transportation

conditions. The question whether the domestic rates are reasonable would seem to be one which could be more appropriately left for trial in a proceeding directly involving that issue. Immediately after the hearing in this case one of the protestants filed a complaint assailing as unreasonable the domestic rates from Chicago and Cincinnati to eastern cities. *Pollak Steel Co. v. B. & O. R. R. Co.*, Docket No. 9380.

While the shippers would of course prefer to see the export rates continued, there appears to be no great objection to the application of domestic rates during the existence of present conditions. What opposition there is seems to be due in some measure to the fear that the shippers may experience some difficulty in having the export rates restored, when immediately upon the cessation of hostilities the foreign competition will probably make itself manifest.

Protestants located at Chicago and Cincinnati also complain of the increased differentials over Pittsburgh which are found in the domestic rates. Counsel for the Pittsburgh interests, on the other hand, contends that the differential Chicago over Pittsburgh on eastbound traffic should not be reduced, because of the fact that on traffic to points west of Missouri Chicago enjoys a substantial advantage over Pittsburgh. It should be said, however, that the rate structures on traffic eastbound and westbound are constructed upon entirely different bases, and that therefore the eastbound adjustment must be determined independently. We will now proceed to a consideration of that phase of the case.

Several of the protestants object to any increase whatever in the spread, while another, if the export rates are to be canceled, asks merely that the Chicago-New York basis be observed. The Chicago-New York percentage system is not strictly adhered to in making rates on iron and steel. Pittsburgh, a 60 per cent point, and which on all other traffic pays 60 per cent of the Chicago-New York rate, has rates on iron and steel which are about 52 per cent of the Chicago-New York rates. Rates from producing points east of Pittsburgh are made with relation to the Pittsburgh rate, and those from points in the Mahoning and Shenango valleys in eastern Ohio and from Cleveland, Middletown, and other Ohio points, not including Cincinnati, are based on differentials of 2 or 3 cents over the rates from Pittsburgh. These will hereinafter be referred to as the related points. From Chicago, Cincinnati, and points other than Pittsburgh and the related points the rates on classes and commodities generally are based on the Chicago-New York scale. The departure from the usual basis is attributed to a demand made in 1901 for lower rates from Pittsburgh. The Pittsburgh steel interests

threatened to build a line of their own to the seaboard if they did not get a reduction. The carriers acceded to the demand and granted Pittsburgh the same rates on iron and steel as were effective from Buffalo, N. Y. Pittsburgh is about the same distance from New York as Buffalo.

The effects of the pressure felt at Pittsburgh spread to the related points in Pennsylvania and Ohio. Buffalo under a strict application of the Chicago-New York percentage system would be a 60 per cent point, but that basis is not used. Its rates on all classes and commodities for many years have been about 52 per cent of Chicago-New York rates. It is explained that the lines from Buffalo to New York have refused to charge higher rates between those points than the Pennsylvania Railroad charges from Erie to Philadelphia, Pa. The rates from Erie are made by taking 60 per cent of the Chicago-New York rate and deducting the usual port differentials. As Buffalo is substantially equidistant from New York, Philadelphia, and Baltimore, the differentials accorded the two latter points are waived and the same rates are applied to all three. The haul from Buffalo to New York is included in the haul from Erie to Philadelphia via certain circuitous routes, and this situation is said to have been partially responsible for the application of the Erie-Philadelphia rates from Buffalo to New York. The Erie Canal is generally understood to have played a part in depressing the rates from Buffalo. Iron and steel are commodities that move from Pittsburgh in large volume, and there appears to have been no demand for a reduction of the rates on classes and commodities generally from that point to the seaboard. This basis, which was used in 1901 on domestic iron and steel traffic, was also used in 1903 on export traffic. The situation described remains to-day as regards both the domestic and export rates.

At present the parties are principally interested in the rates on billets, and we will take them as representative. The current export and domestic, or proposed export, rates thereon from Chicago, Cincinnati, and Pittsburgh to New York, the differentials the two former points pay and would pay over Pittsburgh, and the amounts of the increases are shown below in Table No. 1. The figures in Table No. 2 are obtained by taking the domestic rate from Pittsburgh as a base and adjusting the domestic rates from the two other points under the Chicago-New York percentage scale, as suggested by one of the protestants.

TABLE No. 1.
[Rates per long ton.]

	Chicago.		Cincinnati.		Pitts- burgh.
	Rate.	Differen- tial over Pitts- burgh.	Rate.	Differen- tial over Pitts- burgh.	Rate.
Domestic.....	\$5. 26	\$2. 50	\$4. 58	\$1. 82	\$2. 76
Export.....	3. 52	1. 68	3. 06	1. 22	1. 84
Increase.....	1. 74	. 82	1. 52	. 60	. 92

TABLE No. 2.

Domestic.....	\$4. 60	\$1. 84	\$4. 00	\$1. 24	\$2. 76
Export.....	3. 52	1. 68	3. 06	1. 22	1. 84
Increase.....	1. 08	. 16	. 94	. 02	. 92

Since the same method is employed in making rates on domestic as on export traffic, there would not be any change in the relationship should the present domestic rates become applicable, but only in the absolute amount of the differentials over Pittsburgh. Respondents and the Pittsburgh interests object to the consideration of the question of relationship in this proceeding. They contend that that issue has not been fully and fairly tried, and that it could only have been raised by specific allegations upon formal complaint. Our position is that the law requires that we be satisfied of the "propriety" of proposed rates before we can permit them to become effective. We hold that the carriers have not justified, as a whole, the proposed cancellation of their export rates to the seaboard and the substitution of their domestic rates instead, but that the rates from Pittsburgh and the related points may be allowed to go into effect, provided rates for export traffic are published from Chicago which are related to the Pittsburgh rates as 100 is to 60, and from Cincinnati which are related to the Pittsburgh rates as 87 is to 60. Similar adjustment should be made with respect to other producing points west of Pittsburgh which are not now given rates based on differentials over Pittsburgh. Such rates may be made effective upon five days' notice to the Commission.

Respondents will be expected to call our attention to the new tariffs when filed, whereupon the orders of suspension will be vacated in case the new tariffs conform to the requirements here laid down. The complaint in the *Pollak Steel Co. Case*, above referred to, puts directly in issue the relationship that exists in the domestic rates to eastern cities and also challenges the reasonableness of the domestic rates from certain points. Should any change therein be found

proper in the *Pollak Steel Co. Case*, *supra*, the changed rates, so far as we can now see, would apply also to export rates. In any event, no reason occurs to us why the export rates suggested herein may not, if they have been established, be canceled simultaneously with any readjustment that may be made in the domestic rates as a result of our decision in that case. The proposed schedules here in issue will be held under suspension until new tariffs are filed in accordance with the views herein expressed.

CLEMENTS, *Commissioner*, dissenting:

Both the domestic and export rates on the traffic here involved were increased in 1914 in the so-called *Five Per Cent Case*. By its present action the Commission approves a further increase of the export rates to the basis of the increased domestic rates.

If it be true that there is no justification for export rates less than domestic, and equalization of the two is justified, I believe that, under the conditions of greatly increased earnings by the carriers since 1914, such equalization might justly be brought about on a basis somewhat lower than the present domestic rates. It seems to me that before taking the domestic rates as the measure for uplifting the export rates their reasonableness, under present conditions, might well be inquired into and determined. I am unable, therefore, to concur in the Commission's disposition of this case. •

HALL, *Commissioner*, dissenting:

I join in the dissent voiced by COMMISSIONER CLEMENTS for the reasons there given, and for the further reasons that the conditions imposed by the majority report with respect to export rates from Chicago, Cincinnati, and related points, to the Atlantic seaboard, disturbing as they do a rate relationship of long standing, seem to rest on assumption rather than on the degree of proof requisite for the disposition of so weighty a matter, and, to some extent at least, prejudice the *Pollak Steel Co. Case*, as yet unheard, in which domestic rates from the same points of origin are under attack.

43 I. C. C.

No. 7739.
SOUTHERN LUMBER COMPANY
v.
CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted June 13, 1915. Decided January 22, 1917.

Following *Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co.*, 27 I. C. C., 370, and *Spoke Mfrs. Asso. v. St. L. S. W. Ry. Co.*, Docket No. 6474, unreported, rates on chair stock, in the rough, from points in Missouri and Arkansas to points in Illinois, Missouri, Indiana, Ohio, Pennsylvania, Michigan, and Wisconsin found unreasonable and unduly prejudicial to the extent that they exceeded and may exceed the rates contemporaneously in effect on lumber of the same kind of wood. Reparation denied.

F. M. Ducker for complainant.

C. P. Stewart for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; New York Central Railroad Company; and Michigan Central Railroad Company.

Fred G. Wright and *C. C. P. Rausch* for St. Louis, Iron Mountain & Southern Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

MEYER, Chairman:

Complainant is J. F. Von Behren, engaged in the purchase and sale of lumber and other forest products under the firm name of Southern Lumber Company, with his principal office at Cairo, Ill. By complaint, filed February 8, 1915, he alleges that the rates charged by defendants for the transportation of chair stock, in the rough, in carloads, from points in Missouri and Arkansas to points in Illinois, Missouri, Indiana, Ohio, Pennsylvania, Michigan, and Wisconsin between August 21, 1913, and January 28, 1914, were unreasonable and unjustly discriminatory to the extent that they exceeded the rates contemporaneously in effect from and to the same points on lumber of the kind from which the chair stock was made. Reparation is asked.

The chair stock shipped by complainant is made from green oak lumber. The felled trees are first cut into long logs, which are later

cut into short logs. The short logs are sawed into flitches or rough boards. Patterns of desired sizes are marked on the flitches, which are then sawed with a band scroll saw into pieces about 42 inches by 1½ inches by 3 inches, which constitute chair stock. Complainant contends that chair stock is only short dimension lumber and that it requires the same number of mechanical operations to produce as the production of lumber requires; that the lumber used in making chair stock is of a lower grade than oak lumber, because short and imperfect pieces can be utilized which are useless as lumber; and that chair stock loads heavier than lumber.

When the manufacturer receives chair stock it is first put into a yard to air dry and remains there for from three months to a year. It is then kiln dried. After the stock is thoroughly dried it is subjected to 10 separate and distinct mechanical operations, each operation requiring a separate machine, after which it is ready for the finished chair. The rates on the finished article are not assailed.

Chair stock, sawed or turned to shape, not further finished, moves from Arkansas and Missouri and other points west of the Mississippi River to Mississippi River crossings at rates uniformly 3 cents higher than the corresponding rates on lumber. When joint rates are published on lumber from points west of the river to points in central freight association territory chair stock moves from and to the same points at rates uniformly 3 cents higher than the corresponding joint rates on lumber. Official classification rates chair stock sixth class. When there are no joint rates from points west of the river to central freight association territory chair stock moves at class rates or at certain arbitraries over the lumber rate for the movement east of the river. Lumber also is rated sixth class in official classification, but generally moves at commodity rates lower than the class rates. The Chicago & Eastern Illinois Railroad applies the proportional rate applicable on lumber to chair stock, in the rough, sawed, when from points west of the river.

Complainant relies almost entirely upon comparisons of the rates assailed with the rates applicable on analogous wooden articles which take the rates applicable on lumber, such as wagon felloes, quarter-sawed oak lumber, carpenter's molding, club turned spokes, barrel shocks, veneer, tank material, plow beams or agricultural implement wood in the rough, thin ash lumber, thin oak flooring, barrel staves, barrel heading, and ceiling. Lumber and many of the articles taking the rates on lumber are more valuable and more liable to damage in transit than chair stock. All chair stock must be completely remanufactured before it can be used in chairs, and dents or scratches or dirt do not affect its value.

Almost identical issues were joined in *Eastern Wheel Mfrs. Asso. v. A. & V. Ry. Co.*, 27 I. C. C., 370, and *Spoke Mfrs. Asso. v. St. L. S. W. Ry. Co.*, Docket No. 6474, unreported. Following these cases we find upon all of the facts disclosed here that the rates assailed were, are, and for the future will be unreasonable and unduly prejudicial to the extent that they exceeded and may exceed the rates contemporaneously in effect from and to the same points on lumber manufactured from the same kind of wood. No reparation will be awarded.

The conclusion herein expressed we reach upon the record now before us. If upon the larger record in the general lumber investigation, *In the Matter of Rates on and Classification of Lumber and Lumber Products*, Docket No. 8131, not yet submitted, a different conclusion is reached relative to the relationship between rates on lumber and the various products of lumber, the order entered herein will be modified accordingly.

An appropriate order will be entered.

✓ I. C. C.

No. 6625.

MICHIGAN PAPER MILLS TRAFFIC ASSOCIATION ET AL.
v.
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted October 25, 1916. Decided January 22, 1917.

Rates on printing paper and wrapping paper from points in Michigan at which complainants' mills are located to points in central freight association territory east of the Indiana-Illinois state line found to be unduly prejudicial to complainants as compared with the rates on the same commodities to the same points of destination from mill points in the Fox River and Wisconsin River districts in Wisconsin.

Frank A. Larish, C. R. Hillyer, Herman Mueller, and Cassoday, Butler, Lamb & Foster for complainants.

Felix J. Streyckmans for Wisconsin Traffic Association, intervener.

Allen S. Olmsted, 2d, and Robert P. Jenks for West Virginia Pulp and Paper Company, intervener.

Charles H. Tiffany for New England Paper & Pulp Traffic Association, intervener.

Ernest S. Ballard and D. P. Connell for central freight association lines, defendants.

C. C. Wright, R. H. Widdicombe, Albert H. Lossow, O. W. Dynes, C. A. Lahey, and J. N. Davis for Wisconsin lines, defendants.

J. T. Johnston for Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, defendants.

S. L. Strauss for Grand Trunk Western Railway Company, defendant.

W. J. Kelly for Grand Rapids & Indiana Railway Company, defendant.

REPORT OF THE COMMISSION UPON REHEARING.

MEYER, Chairman:

In our original report in this proceeding, 38 I. C. C., 517, we held, in effect, that the rates on printing paper and wrapping paper from certain points in Michigan at which complainants' mills are located to interstate points in central freight association territory were unduly prejudicial to complainants as compared with the rates to the same points of destination from mill points located in the Fox River and Wisconsin River districts in the state of Wisconsin. About six months after the original hearings in this proceeding were concluded

the carriers in official classification territory filed tariffs in which they proposed the uniform application of sixth-class rates on printing and wrapping paper throughout that territory. Upon protests filed by numerous shippers of paper those tariffs were suspended in *Official Classification Rates on Paper*, 38 I. C. C., 120. In our report in that case we gave our general approval to the application of the sixth-class rates to these commodities. As a result of this decision material increases were made in the rates on printing paper and wrapping paper from some of the largest producing districts, particularly in the rates to central freight association territory from mills in northern New York, and in the so-called Tyrone-Piedmont group in the states of Pennsylvania, Maryland, and Virginia. The rates from New England producing points to central freight association territory were reduced from fifth class to sixth class.

The filing of these new tariffs and their approval by us made so many changes in the rates throughout official classification territory that it was quite impossible for us, in our original report in this proceeding, to determine accurately what changes, if any, should be made in the rates from Wisconsin or Michigan to remove the discrimination which the complainants alleged to exist. Wisconsin is not located in official classification territory, and its rates were therefore not directly affected by the recent increases in that territory. We found, however, that "the spread between the rates from the Michigan mills and the Wisconsin mills should be at least $1\frac{1}{2}$ cents per 100 pounds greater than at present," but added that we were "unable to say * * * what further changes in the rates, if any, should be made in the light of the general readjustment of rates on paper throughout official classification territory."

The Commission's finding that the spread between the rates from Michigan and those from Wisconsin should be increased by "at least $1\frac{1}{2}$ cents" resulted in general dissatisfaction, principally because a number of the producers of paper in official classification territory felt that more substantial increases should be made in the rates from Wisconsin.

The rates from Wisconsin were originally made with relation to the rates from mills in northern New York, and the increases recently made from northern New York to points in central freight association territory, as a result of the general readjustment to which reference has already been made, were considerably in excess of $1\frac{1}{2}$ cents per 100 pounds. The object of the rehearing in this case was to determine what further changes, if any, should be made for the purpose of making the rates from Wisconsin bear a reasonable relationship to the sixth-class basis now prevailing throughout official classification territory. It should be observed that the rates from Michi-

gan points to points in central freight association territory are and for some time have been on the sixth-class basis. That basis having been recently adopted by the carriers throughout official classification territory as just and reasonable, it would be practically impossible to increase the spread between the rates from Michigan and the rates from Wisconsin by reducing the former. Effective September 9, 1916, a few days after the last hearing, the defendants filed a tariff in which they increased the rates from Wisconsin points to central freight association territory, the increases averaging considerably more than 1½ cents per 100 pounds and in some instances as much as 3.2 cents per 100 pounds. This new tariff, which will be referred to in this report as the Boyd tariff and which was used at the hearing as a basis for discussion, was filed with the consent and approval of the Wisconsin producers, who feel that it establishes a fair relationship in the rates from the several competing territories. The complainants maintain, on the other hand, that it still gives the Wisconsin producers an unjust advantage, and the same contention is made by the New England Paper & Pulp Traffic Association, intervener, which has supplied us with helpful information with respect to the history of the rates involved. The Wisconsin mills ship large quantities of paper to the markets in central freight association territory. In 1914 their total shipments to these points aggregated 71,614 tons.

The Wisconsin producers contend that the rates from Wisconsin should be so constructed as to bear a reasonable relationship to the rates from the producing districts in official classification territory, disregarding the fact that the Wisconsin mills are located in western trunk line territory. Nearly all of the mills which ship paper to the markets in central freight association territory are located in official classification territory, the heaviest production being in New England, northern New York, the Hudson River valley, Ohio, Michigan, and in the Tyrone-Piedmont district. The contention of the Wisconsin producers is that "the only way to place Wisconsin on the same footing as other paper-producing territories is to make commodity rates from Wisconsin which will bear a fair relation to the sixth-class rates in official classification territory." In this connection emphasis is laid on the fact, previously mentioned, that the rates from Wisconsin were originally made the same as the rates from the producing district in northern New York, Cincinnati, Ohio, being the common point at which the rates from both producing districts are said to have been equalized. The Boyd tariff has also been constructed on the principle that the rates from Wisconsin and from northern New York should be approximately the same for similar distances, and a point near Sandusky, Ohio, regarded as equidistant

from both districts, is now selected as the point to which the rates should be equalized. For a number of years the rate to Sandusky was 15 cents from northern New York and from Wisconsin. In the Boyd tariff this rate is increased to 18.5 cents from Wisconsin, which is the present rate from northern New York.

The complainants contend that this adjustment is unfair because it gives the Wisconsin mills more favorable rates than they would have if due consideration were given to the fact that Wisconsin is not in official classification territory. The class rates and most of the commodity rates from Wisconsin to points in central freight association territory are constructed by taking the lowest available combination on Chicago, Milwaukee, or Manitowoc, the joint rates on paper constituting an exception to the general rule. The car-ferry routes operating across Lake Michigan compete with the all-rail routes via Chicago, and they have found it necessary, as a competitive measure, to publish the class rates from Chicago as proportional rates from Milwaukee and Manitowoc. The rate on paper from the Fox River and Wisconsin River groups to Milwaukee and Manitowoc is lower than the rate to Chicago, and the lowest combinations are therefore made through those gateways.

As previously stated, the rates on printing paper and wrapping paper from producing points in Wisconsin are, contrary to the general rule, published as joint through rates. Prior to the Boyd tariff they were much lower than the lowest possible combination on any of the gateways, and even in that tariff, in spite of the material increases made therein, most of the rates are slightly less than the lowest combination. There is a commodity rate of $7\frac{1}{2}$ cents from the Fox River and Wisconsin River districts to Milwaukee and Manitowoc. The complainants contend that that rate is low, and that in connection with the sixth-class proportional rates east of the gateways, it results in unreasonably low combination rates to the destinations in question. They maintain that there can be no justification for publishing lower rates from Wisconsin than these combinations would make. The evidence of record would not warrant a finding that the rate of $7\frac{1}{2}$ cents from the Wisconsin group to Milwaukee and Manitowoc is unduly low. Although the blanket covers a large territory, printing paper is produced most extensively at points in the Fox River district, some of which are not more than 45 miles from Manitowoc, and the average distance from the Fox River points to Manitowoc is only 83 miles.

The following table, compiled in most part from a statement submitted by complainant, shows the rates from Wisconsin to typical destinations in central freight association territory. In the first column are given the rates which were in effect prior to the Boyd

tariff; in the second column the rates as published in the Boyd tariff; in the third column the increases which the Boyd tariff effected; in the fourth column the lowest available combinations, using the sixth-class proportional rates east of the gateways; and in the last column the rates which would apply from Wisconsin if the full sixth-class rates were used as factors beyond the gateways:

Rates on printing paper in carloads, in cents per 100 pounds.

From Fox River and Wisconsin River groups to—	Rate prior to Boyd tariff.	Rate as per Boyd tariff.	Increase effected by Boyd tariff.	Lowest available combination. ¹	Full combination. ²
.....	15.8	19.0	3.2	20.1	22.2
.....	14.7	17.8	3.1	18.1	19.1
.....	18.9	22.0	3.1	22.2	23.3
.....	15.8	18.8	3.0	20.1	22.2
.....	14.6	19.0	4.4	20.1	22.2
.....	15.8	19.0	3.2	20.1	22.2
.....	15.8	18.8	3.0	19.6	21.7
.....	15.8	18.0	2.2	18.0	20.1
.....	14.7	16.4	1.7	16.4	18.0
.....	18.9	22.0	3.1	22.2	23.3
.....	15.8	18.8	3.0	22.2	23.3
.....	14.7	16.4	1.7	16.4	18.5
.....	14.7	16.4	1.7	16.4	17.5
.....	15.8	18.8	3.0	19.6	21.7
.....	14.7	17.8	3.1	19.1	19.1
.....	14.7	17.8	3.1	17.8	19.6
.....	15.8	18.0	2.2	17.0	18.0
.....	15.8	18.0	2.2	18.0	20.1
.....	16.8	19.6	2.8	23.2	23.2
.....	15.8	18.0	2.2	18.0	20.1
.....	15.8	18.8	3.0	19.6	21.7
.....	14.7	17.0	2.3	17.0	19.1
.....	18.9	22.0	3.1	23.2	23.2
.....	15.8	18.8	3.0	19.6	21.7
.....	14.7	16.4	1.7	16.4	18.0
.....	15.8	19.0	3.2	19.6	21.7
.....	14.7	17.8	3.1	19.1	19.1
.....	15.8	18.8	3.0	18.0	20.1
.....	18.9	22.0	3.1	23.2	23.2
.....	15.8	20.0	4.2	21.7	22.2

¹ Using proportional sixth-class rates east of the gateways when possible.

² Using full sixth-class rates east of the gateways.

³ Combination of local rates. No proportional rates in effect.

It would require an additional average increase of 8.6 mills per 100 pounds to make the rates from Wisconsin to the above points equal to the lowest available combination.

In the case now before us we can discover no reason for departing from the custom of constructing the rates from Wisconsin to central freight association territory by the lowest combination, unless it be the desire of the Wisconsin lines to give to the Wisconsin mills more favorable rates than are warranted by the transportation conditions. It will be observed from the last preceding table that the rates in the Boyd tariff are equal in a number of instances to the lowest available combination. There is apparently no reason for not following that principle uniformly in constructing these rates.

The complainants contend that the proportional sixth-class rates east of the gateways give their Wisconsin competitors an unjust

advantage, and that if the sixth-class basis is to be generally recognized as proper for the movement of printing paper and wrapping paper within official classification territory, then every pound of such paper which moves in that territory should pay the full sixth-class rates, even if the shipments originate in another territory. To admit the soundness of this contention would be to condemn generally the defendants' policy of publishing the proportional rates from these gateways. If paper moving from Wisconsin to Ohio must pay the full sixth-class rates instead of the sixth-class proportional rates, it would logically follow that it would be unjust in any instance to apply these proportional sixth-class rates to any articles which move on sixth-class rates within official classification territory. The proportional class rates are a part of the rate structure, made so because of competitive conditions which do not govern the rates locally within the territory, and because of the difference in conditions it can not be said that undue preference results from the use of the proportional rate on interterritorial traffic.

If the rates from Wisconsin were made by using the lowest available combinations, the complainants would have a material advantage in rates to all of the points of destination in Ohio and Indiana, an advantage which is sufficient, under normal conditions, to determine the sale of paper in any market. The following table shows the rates from Kalamazoo and from the Wisconsin points to representative markets, together with the complainants' advantage at each point. The rates from Wisconsin here shown are made by using the lowest combination:

Rate on printing paper in carloads.

To—	From Wisconsin points.	From Kalamazoo.	Complainants' advantage.
	Cents.	Cents.	Cents.
Anderson, Ind.....	19.1	10.5	8.6
Cincinnati, Ohio.....	20.1	12.6	7.5
Evansville, Ind.....	22.2	14.7	7.5
Indianapolis, Ind.....	19.1	10.5	8.6
Louisville Ky.....	23.2	13.7	9.5

The record shows that the rates from Kalamazoo are lower than the rates from other producing points for similar distances, and that the combination rates from Wisconsin compare favorably with the rates from northern New York and from other producing districts.

On eastbound traffic from Wisconsin the state of Illinois is not regarded as a part of central freight association territory, while on westbound traffic from eastern points it is regarded as a part of that

territory. The order of the Commission opening this proceeding for further hearing did not define "central freight association territory," and the defendants, as well as the Wisconsin producers, insist that under a strict interpretation of the order Illinois should be excluded from consideration at this time. This is technically correct, and we shall not make a finding in this report with respect to the rates to Illinois points.

We find and conclude, upon consideration of all the evidence, that the rates on printing paper and wrapping paper from Kalamazoo, Plainwell, Otsego, and Vicksburg, all in the state of Michigan, to points in central freight association territory, including all points in the states of Ohio and Indiana, are unduly prejudicial to complainants as compared with the rates on the same commodities from points in the Fox River and Wisconsin River groups in Wisconsin. We further find that this undue prejudice would be removed if the rates on printing paper and wrapping paper from the Fox River and Wisconsin River groups to the destinations in question were constructed on the lowest combinations available.

The complainants attack also the rates on writing paper and tissue paper, but the rates on those commodities were almost entirely disregarded at the hearing, and we are unable to make a definite finding with respect to them.

An appropriate order will be entered.

48 I. C. C.

No. 7198.
GEORGE A. HORMEL & COMPANY
v.
CHICAGO GREAT WESTERN RAILROAD COMPANY
ET AL.

Submitted May 13, 1915. Decided January 19, 1917.

On complaint that through rates on fresh meat and packing-house products from Austin, Minn., to points east of the Indiana-Illinois state line are unreasonable and unjustly discriminatory; *Held*, That the evidence fails to show that the rates complained of are unreasonable; that the adjustment of rates is shown to be unjustly discriminatory; that rates from Austin to points of destination involved should for the future be no higher than those contemporaneously maintained on the same articles from Mason City, Iowa; and that rates from Albert Lea, Minn., should not be more than one-half a cent higher than from Austin.

George Patterson Boyle for complainant.

Albert and *Henry Veeder*, *R. C. McManus*, and *R. D. Rynder* for Swift & Company, intervener.

E. W. Skipworth and *W. R. Brown* for Albert Lea Packing Company, intervener.

J. N. Davis for Chicago, Milwaukee & St. Paul Railway Company.

R. H. Widdicombe for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

K. F. Burgess for Chicago, Burlington & Quincy Railroad Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

A. P. Humburg for Illinois Central Railroad Company.

W. H. Bremner for Minneapolis & St. Louis Railroad Company.

G. A. Kelly for Chicago Great Western Railroad Company.

N. H. Anspach for New York Central lines.

James Stillwell for Pennsylvania Railroad Company; Pennsylvania Company; and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

S. L. Strauss for Grand Trunk Railway system.

H. W. Forbes for Erie Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Complainant owns and operates at Austin, Minn., a meat-packing plant, where it slaughters, dresses, and ships principally the fresh and cured products of hogs. Its complaint is that through rates maintained by defendants for transportation of fresh and cured meats from Austin to points east of the Indiana-Illinois state line are unreasonable, and that they unduly discriminate against complainant and unjustly prefer its competitors at various points in the state of Iowa. Reparation is asked.

Swift & Company, which owns and operates a meat-packing plant at South St. Paul, Minn., and the Albert Lea Packing Company, which operates a similar plant at Albert Lea, Minn., intervened.

Austin is located about 12 miles north of the Iowa-Minnesota state line, 350 miles northwest of Chicago and 98 miles south of St. Paul, Minn. It is reached by the rails of the Chicago, Milwaukee & St. Paul Railway Company and the Chicago Great Western Railroad Company. Albert Lea is located 22 miles west of Austin and is reached by rails of the Chicago, Rock Island & Pacific Railway Company, the Illinois Central Railroad Company, the Chicago, Milwaukee & St. Paul Railway Company, and the Minneapolis & St. Louis Railroad Company.

The through rates on fresh and cured meats and other packing-house products from Austin, South St. Paul, and Albert Lea to points east of the Indiana-Illinois state line are the same, and are made by combining the local rates from the points of origin to Chicago and the local rates from Chicago. From various Iowa points, at which packing plants similar to that of complainant are operated, to points east of the Indiana-Illinois state line, the defendants maintain proportional rates to and from the Mississippi River applicable to the commodities involved, which when combined make the through rates less than from Austin and related points to the same points of destination.

The following table gives the distances in miles via Chicago from South St. Paul and Austin, and from Marshalltown, Mason City, and Cedar Rapids, Iowa, which are representative Iowa points, to representative destinations east of the Indiana-Illinois state line, together with the current rates, in cents per 100 pounds, on fresh meats and packing-house products:

43 I. C. C.

From—	To Boston.	To New York.	To Buffalo.	To Detroit.	To Columbus.	To Cincinnati.
South St. Paul:						
Distance.....miles..	1,416	1,320	986	675	718	688
Rate fresh meat.....cents..	65.3	65.3	46.4	39.0	57.5	39.0
Packing-house products.....do....	50.5	47.5	34.9	28.6	34.4	25.0
Austin:						
Distance.....miles..	1,349	1,262	873	622	665	635
Fresh meat.....cents..	65.3	65.3	46.4	39.0	57.5	39.0
Packing-house products.....do....	50.5	47.5	34.9	28.6	34.4	25.0
Marshalltown:						
Distance.....miles..	1,288	1,201	812	561	604	574
Fresh meat.....cents..	57.5	57.5	38.6	31.3	33.9	26.5
Packing-house products.....do....	44.5	41.5	28.6	22.6	23.9	17.6
Mason City:						
Distance.....miles..	1,355	1,268	879	628	671	641
Fresh meat.....cents..	59.5	59.5	40.6	33.3	35.9	28.5
Packing-house products.....do....	46.5	43.5	30.6	24.6	25.9	19.6
Cedar Rapids:						
Distance.....miles..	1,218	1,126	742	491	534	498
Fresh meat.....cents..	56.5	56.5	37.6	30.3	32.9	25.5
Packing-house products.....do....	43.5	40.5	27.6	21.6	22.9	16.6

The short-line distances to Buffalo, N. Y., and points east thereof from St. Paul and Austin are via across-lake routes, but it appears from this record that practically all the traffic involved moves via Chicago.

To New York City the proportional rates from the Mississippi River, applicable to shipments from Iowa points, are 52.5 cents per 100 pounds on fresh meats, 41.8 cents on cured meats in bulk, and 36.5 cents on other packing-house products. Proportional rates to the river from certain Iowa points on fresh meats and packing-house products are as follows: Mason City, 7 cents; Marshalltown, Waterloo, and Ottumwa, 5 cents; and Cedar Rapids, 4 cents.

To support its contention that rates from Austin are unreasonable, complainant filed a statement showing relative per car-mile earnings, in cents, on packing-house products from St. Paul, Austin, Mason City, Waterloo, Cedar Rapids, Marshalltown, and Ottumwa, based on loading of 30,000 pounds. From this statement it appears that the average per car-mile earnings on shipments from the Iowa points are 11.4 cents and the average from Austin and St. Paul 12.3 cents. From this it is argued that the rates from Austin are unreasonable, because of the well-established principle that as distance increases the earnings per car-mile should decrease. The principle generally is as stated, but it does not invariably govern. The location of points in different territories where different conditions prevail occasionally warrants departure from the rule that per ton-mile and per car-mile earnings should decrease with distance. The mere fact that the per car-mile earnings are somewhat higher on this traffic from Austin than from the average of the Iowa cities is not proof that rates from Austin are unreasonable.

It is also contended that as shipments from Austin and St. Paul move through Chicago to eastern points, the through rates should be somewhat less than the combination on Chicago, and that through rates which equal the combination are unreasonable. In *Hormel & Co. v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 98, we found that a reasonable rate on fresh meats from Austin and St. Paul to Chicago is 18 cents, and on packing-house products 16 cents. In *Decker & Sons v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 547, we had under consideration similar rates from Mason City to Chicago. In that case we found that the rates in effect from Austin to Chicago were reasonable when applied from Mason City to Chicago. The rates on fresh meats and packing-house products from Chicago to the east have been in effect for many years, and since the complaint herein was filed have been increased. *The Five Per Cent Case*, 32 I. C. C., 325. A carload of mixed packing-house products is valued at from \$3,500 to \$4,500, and of fresh meats from \$2,600 to \$2,700. Fresh meats and packing-house products are high-class freight requiring expedition of movement and first-class equipment. Rates on traffic of this character which do not yield over 8 mills per ton-mile and which produce car-mile earnings under 13 cents can not be said on their face to be unreasonable. Under all the circumstances shown on this record we do not find that the through rates to the east from Austin, St. Paul, and Albert Lea here involved, though equal to the combination of rates to and from Chicago, are unreasonable.

It is further contended by complainant that the adjustment of rates from Austin as compared with that from the Iowa points constitutes undue discrimination against Austin. Complainant ships about one-fifth of the product of its plant to points east of the Indiana-Illinois state line. It is alleged that at points in the territory involved the competition which complainant meets is from its Iowa competitors. The evidence relates almost entirely to the situation that confronts complainant at New York City. To that point the Iowa packers have an advantage in freight rates of from 9 to 4 cents per 100 pounds, dependent on the point of origin. This difference in rates means from \$12 to \$21 per car higher charges to the Austin shipper, dependent on the commodity, the loading, and the point of origin in Iowa. Complainant makes its sales in the east through brokers, which is largely the plan of the Iowa packers. The larger packers make sales from branch houses. Both means of sales contemplate that the shipper shall pay the freight charges.

Complainant asks that on all its shipments from Austin to points east of the Indiana-Illinois state line it be given a proportional rate to the Mississippi River not to exceed 6 cents. It is pointed out that via the Chicago, Milwaukee & St. Paul the distance from Austin

to Dubuque, the northernmost of the Mississippi River crossings, is 165 miles, while from Mason City it is 171 miles. The distances via the Chicago Great Western are 189 miles and 216 miles, respectively, from Austin and Mason City. The proportional rates applicable from the Iowa points to the Mississippi River apply on both fresh meats and packing-house products. In *Decker & Sons v. C., M. & St. P. Ry. Co.*, *supra*, 547, 548, it is said that—

The evidence of record does not clearly explain why the rates on fresh meat and packing-house products are the same from so many of these points. Certainly it is not the universal custom to quote the same rate on both.

This record does not contain any explanation of the adjustment of rates from the Iowa points. It is asserted that there is a relation between the Missouri River, Omaha, and St. Paul, and that changes in the rates from these points have not been followed by an adjustment of the rates from interior Iowa points. Complainant's request is that the basis of making rates from Austin to the east should be the same as obtains with respect to rates from the Iowa points to the east. The Albert Lea Packing Company asks that whatever rate adjustment is found reasonable from Austin should also be made applicable from Albert Lea. Swift & Company ask that through rates from St. Paul be made via Chicago, and that this basis be extended to Austin and Albert Lea.

With reference to rates from Austin to Chicago, we said, on rehearing, in *Hormel & Co. v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 98, 101:

It is apparent from the record as a whole that there is a closer defined relationship between South St. Paul and Austin than between Austin and the Iowa points.

That decision makes no reference to through rates to points east of the Indiana-Illinois state line. If Austin is properly grouped with St. Paul with respect to rates to Chicago it might seem to follow that it is also properly grouped with St. Paul with respect to rates to points east of the Indiana-Illinois state line. But we are not prepared, in the light of the more complete information now at hand, to hold that Austin and Albert Lea may properly be grouped with St. Paul. We are of the opinion that to group Austin and Albert Lea with St. Paul under rates so much higher than are exacted from Mason City, which is their nearest and strongest competitor in the purchase of hogs in the common territory between them, unduly discriminates against complainant and the Albert Lea Packing Company. As we have seen, the distance from Austin to the Mississippi River is less than that from Mason City via either of the two roads that serve both places. We can see no

justification for the maintenance by the defendants Chicago, Milwaukee & St. Paul Railway and Chicago Great Western Railroad of proportional rates from Mason City to Dubuque lower than the rates contemporaneously maintained from Austin.

We are not prepared, under these circumstances and in view of the greater distance from St. Paul, to hold that St. Paul is entitled to the same rates as Austin. The distance from Albert Lea is somewhat greater to the river than from Austin. The packing houses at Albert Lea, Austin, and Mason City compete actively in the same territory in the purchase of hogs. Albert Lea may reasonably be required to pay slightly higher rates than Austin. We think that the difference may reasonably be not more than one-half cent per 100 pounds. We shall not attempt upon this record to prescribe a relationship of rates as between Austin and St. Paul.

Upon the whole record we find that the present adjustment of rates on fresh and cured meats to points east of the Indiana-Illinois state line unduly prejudices complainant and intervener Albert Lea Packing Company and unduly prefers their competitors at Mason City. We also find that it is unduly prejudicial against complainant and the Albert Lea Packing Company and unduly preferential to their competitors at Mason City for defendants Chicago, Milwaukee & St. Paul and Chicago Great Western to maintain rates on fresh and cured meats in carloads to the Mississippi River when destined to points east of the Indiana-Illinois state line from Austin higher than those contemporaneously maintained from Mason City, and from Albert Lea more than one-half cent per 100 pounds higher than those contemporaneously maintained from Austin.

Through rates to points east of the Indiana-Illinois state line from Austin and Albert Lea are made, as above stated, by combining intermediate rates to and from Chicago. The factor of the through charge east of Chicago is not attacked in this proceeding. The order will therefore be made only against the Chicago Great Western and Chicago, Milwaukee & St. Paul, which serve Mason City and Austin. The latter carrier also serves Albert Lea.

These findings are without prejudice to any conclusion that may be reached in our investigation in No. 8436, the *Live Stock Products Case*.

There is no basis for an award of reparation shown on this record, and none will be awarded.

An appropriate order will be entered.

**INVESTIGATION AND SUSPENSION DOCKET No. 837.
RICE FROM TEXAS AND LOUISIANA (No. 2).**

Submitted October 9, 1916. Decided January 27, 1917.

1. Proposed increased rates on clean rice from points in Texas, Louisiana, and Arkansas to Memphis, Tenn., and for interstate movements from points in Arkansas, Louisiana, and Texas to points in Texas, Louisiana, and Arkansas, found to have been justified.
2. Proposed increased rates on rough rice from points in Arkansas and Louisiana to Memphis, and for interstate movements from points in Arkansas, Louisiana, and Texas to points in Texas, Louisiana, and Arkansas, found to have been justified in part.
3. Proposed increased proportional rates on clean and rough rice from points in Arkansas and Louisiana to Memphis when destined to points in southeastern territory, except those taking Ohio River rates or rates related thereto, found not to have been justified.
4. Proposed increased rates on clean rice from points in Texas and Louisiana to Texas ports for export or coastwise movement found to have been justified.
5. Proposed increased rail and water rates on clean rice from Texas points to points in seaboard territory, except to points in southeastern territory, found to have been justified.
6. Proposed increased rates on rice products for interstate movements from points in Arkansas, Louisiana, and Texas to points in Texas, Louisiana, and Arkansas, and proposed increased rail and water rates on rice products from Texas points to seaboard territory, found not to have been justified.

Baker, Botts, Parker & Garwood; Denegre, Leovy & Chaffe; and F. H. Wood for respondents.

J. H. Tallichet and Gentry Waldo for Sunset Central lines.

C. C. P. Rausch for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

F. R. Dalzell and T. J. Norton for Gulf, Colorado & Santa Fe Railway Company.

H. C. Callahan for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.

J. F. Garvin for Missouri, Kansas & Texas Railway Company of Texas.

W. S. Cornell for Texas & Pacific Railway Company.

J. C. Brasher for Galveston, Harrisburg & San Antonio Railway Company and Texas & New Orleans Railroad Company.

Gentry Waldo for Texarkana & Fort Smith Railway Company and Kansas City Southern Railway Company.

J. A. Morgan and F. A. Lallier for Rice Millers Association and Houston Chamber of Commerce.

Huggins & Kayser for Houston Chamber of Commerce.

A. Pace for Rice Millers Association and Southern Rice Growers Association.

Chas. A. Bland for Beaumont Chamber of Commerce.

H. S. L'Hommedieu for Orange Rice Mill Company and Orange Board of Trade.

Theo. Brent and *John A. Smith* for New Orleans Joint Traffic Bureau.

A. D. Beals and *A. W. Reading* for Arkansas Rice Mills.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The tariffs considered in *Rice from Texas and Louisiana*, 40 I. C. C., 285, which were filed to take effect January 1, 10, and 12, 1916, represented an attempt by the rail carriers serving the rice belt of Texas, Louisiana, and Arkansas to increase their interstate carload rates on clean rice by 5 cents per 100 pounds to nearly all points in the country except to points in the three states of origin, points in the far west, and points east of the Mississippi River and south of the Ohio and Potomac rivers, exclusive of points taking Ohio River or related rates. Similar increases were attempted from Memphis, Tenn., and related increases in the rates on rough rice and rice products. In one schedule increases were also proposed in less-than-carload rates from Memphis, Tenn., to Ohio and Mississippi river crossings. No justification was offered for the rates proposed on rough rice and rice products and they were ordered canceled, but most of the proposed rates on clean rice were found justified in our report, *supra*. Before this decision was announced other schedules were filed proposing increased rates on clean rice, rough rice, and rice products from points in the rice belt to destinations not included in the earlier tariffs. The operation of these schedules was suspended by us until March 4, 1917. It was explained at the hearing that all these tariffs were to have become effective at the same time but that the publication of the rates now before us was unavoidably delayed. The evidence in *Rice from Texas and Louisiana*, *supra*, is made a part of this record by appropriate stipulation. In this report rates are stated in cents per 100 pounds and separate consideration will be given to each of the suspended schedules.

1. SUPPLEMENTS NOS. 55 AND 57 TO AGENT LELAND'S I. C. C. NO. 1001.

These supplements propose an increase of 5 cents in the local rates on clean and rough rice in carloads from stations in Arkansas, Louisiana, and Texas to Memphis, Tenn., and also in the proportional

rates from stations in Arkansas and Louisiana to Memphis when destined to points in southeastern territory.

No increased rates on clean rice from New Orleans or Texas points to points in southeastern territory, except to points taking Ohio River rates or rates related thereto, were proposed in *Rice from Texas and Louisiana, supra*. As the evidence offered here in support of the proposed increases is the same as that relied upon in that proceeding, we find that the increased proportional rates to points in the southeast have not been justified except as to points taking Ohio River rates or rates related thereto.

Since the schedules under suspension in this proceeding were filed reasonable rates on rough rice from points in Arkansas to Memphis have been prescribed by us in *City of Memphis v. C., R. I. & P. Ry. Co.*, 39 I. C. C., 256. In compliance with our order in that case some of the respondents here have published the following scale of rates in lieu of those proposed in the suspended items:

	Centa.
20 miles and under.....	5
35 miles and over 20 miles.....	6
50 miles and over 35 miles.....	7
65 miles and over 50 miles.....	8
80 miles and over 65 miles.....	9
100 miles and over 80 miles.....	10
125 miles and over 100 miles.....	11

This scale and the rates under suspension on rough rice will be considered under 2, in connection with Leland's tariff I. C. C. No. 1131.

At the hearing a witness for the carriers urged that most of the items under suspension in supplement No. 55 were already in effect, since supplement No. 57 canceled supplement No. 55 and only three items in supplement No. 57 were suspended by us. The items suspended in supplement No. 55, with but three exceptions, were carried forward in supplement No. 57 as reissues. The only reason for the suspension of any item in this later supplement was the fact that the respondents unwittingly disregarded rule 9 (k) of Tariff Circular 18-A by attempting to change three of the items suspended in supplement No. 55.

With the exceptions noted we find that the increased rates proposed in these supplements have been justified.

2. AGENT LELAND'S I. C. C. NO. 1131 AND SUPPLEMENTS NOS. 1 AND 2.

These schedules propose an increase of 5 cents in the specific car-load rates on clean and rough rice, and of 3 cents on rice products, for interstate movements from points in Arkansas, Louisiana, and Texas to points in Texas, Louisiana, and Arkansas. An increase of 25 per cent in the distance commodity rates applicable on rough rice

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and rice products in carloads is also proposed. These distance commodity rates on rough rice are as follows:

	Cents.
35 miles and less.....	9
Over 35 miles to 40 miles.....	10
Over 40 miles to 50 miles.....	11
Over 50 miles to 60 miles.....	11
Over 60 miles to 70 miles.....	12½
Over 70 miles to 80 miles.....	13
Over 80 miles to 90 miles.....	14
Over 90 miles to 100 miles.....	14
Over 100 miles to 110 miles.....	15
Over 110 miles to 120 miles.....	16
Over 120 miles to 130 miles.....	16
Over 130 miles to 140 miles.....	17
Over 140 miles to 150 miles.....	17½
Over 150 miles to 200 miles.....	19
Over 200 miles to 250 miles.....	20
Over 250 miles to 350 miles.....	21
Over 350 miles.....	24

As a substitute for this scale respondents suggest the application of the scale prescribed by us in *City of Memphis v. C., R. I. & P. Ry. Co., supra*, for distances up to 100 miles and the extension of that scale as follows: 1 cent for every additional 20 miles over 100 miles up to 300 miles and for every additional 25 miles over 300 miles up to 375 miles, the rate for 375 miles to apply for all greater distances. Such a progression would disregard the decreasing importance of additional 20-mile increments as the total distance increased.

There is no evidence that the transportation conditions with respect to rice between the various points from and to which increased rates are proposed differ materially from the conditions under which the traffic is handled from Arkansas to Memphis. We are, therefore, of opinion and find that the application of the scale prescribed by us in *City of Memphis v. C., R. I. & P. Ry. Co., supra*, extended as shown below will result in reasonable rates on rough rice between the originating and destination territory covered by Leland's I. C. C. No. 1131 and supplements Nos. 55 and 57 to Leland's I. C. C. No. 1001:

	Cents.
20 miles and under.....	5
35 miles and over 20 miles.....	6
50 miles and over 35 miles.....	7
65 miles and over 50 miles.....	8
80 miles and over 65 miles.....	9
100 miles and over 80 miles.....	10
125 miles and over 100 miles.....	11
150 miles and over 125 miles.....	12
175 miles and over 150 miles.....	13
200 miles and over 175 miles.....	14
220 miles and over 200 miles.....	15

	Cents.
265 miles and over 230 miles.....	16
300 miles and over 265 miles.....	17
335 miles and over 300 miles.....	18
375 miles and over 335 miles.....	19
425 miles and over 375 miles.....	20

To the extent that the rates on rough rice under suspension exceed the rates produced by the application of the scale last above shown we find that they have not been justified.

But little evidence was offered with respect to rates on rice products and we are of opinion and find that the proposed increased rates on these products have not been justified.

With the exceptions noted, we find that the increased rates proposed in this tariff and supplements have been justified.

3. ST. LOUIS SOUTHWESTERN RAILWAY TARIFF I. C. C. NO. 3471.

This tariff proposes an increase of 5 cents in carload rates on rough rice from points in Arkansas to Louisiana points and to Memphis, Tenn. We are of opinion and find that in so far as these rates exceed those named in the scale above approved they have not been justified.

4. SUPPLEMENTS NOS. 15 AND 16 TO LELAND'S I. C. C. NO. 1083.

These supplements propose increases in the export rates on clean rice, in carloads, from points in the Texas rice belt to Texas ports. These proposed rates exceed the rates fixed by the Railroad Commission of Texas by 4 cents, intended to cover the cost to the carriers of making ship-side delivery. Of the 4 cents, 2½ cents are paid out by respondents at Galveston as follows: 1 cent for the cost of unloading, 1 cent for wharfage, and one-half cent for wharf switching. These deductions leave a margin of 1½ cents between the Texas commission's rate for local delivery in Galveston and that received by respondents for ship-side delivery. The following exhibit prepared by respondents compares the rates under suspension with carload rates on rough rice for corresponding distances between points in Texas and Louisiana on the Southern Pacific:

From—	To Houston.		Texas-Louisiana scale, rough rice.	To Galveston.		Texas-Louisiana scale, rough rice.	To Port Arthur.		Texas-Louisiana scale, rough rice.
	Short-line mileage.	Clean rice		Short-line mileage.	Clean rice.		Short-line mileage.	Clean rice.	
Bay City.....	82	14.0	11.0	84	14.0	11.0	179.9	19.0	15.0
Brownsville.....	83	12.0	11.0	77	12.0	10.5	19.5	9.0	7.5
Beaumont.....	82	14.0	10.0	99	14.0	11.5	165.2	19.0	15.0
Houston.....				43.6	9.0	8.5	102.3	15.0	12.0
Louisville.....	63	14.0	10.0	100	14.0	11.5	166.2	19.0	15.0
Lane City.....	66	14.0	10.0	99	14.0	11.5	177.6	19.0	15.0
Wharton.....	60.5	14.0	10.0	91.9	14.0	11.5	169.3	19.0	15.0

We find that the increased rates proposed in these supplements have been justified.

5. SUPPLEMENTS NOS. 33 AND 35 TO AGENT FONDA'S I. C. C. NO. 16.

These supplements propose increases in the carload and less-than-carload rates on clean rice from points in Texas to Texas ports for coastwise movement. The increase of 3 cents proposed in the carload rates will result in rates 3 cents higher than the intrastate rates from the same points of origin to the same ports for local delivery. On this coastwise movement the wharfage is paid by the coastwise steamers. The other costs to the carrier of making ship-side delivery are the same as on export traffic.

Two of the items under suspension in these supplements propose to cancel rates on clean rice, less than carloads, and substitute class rates. Respondents stated that they knew of no movement under these less-than-carload rates and rely on our holding in the *Western Rate Advance Case*, 35 I. C. C., 497, to support the cancellation proposed.

We conclude and find that the increased rates proposed in these supplements have been justified.

6. KANSAS CITY SOUTHERN RAILWAY COMPANY'S TARIFF I. C. C. NO. 3485.

This tariff proposes increases in the rates on clean rice, in carloads, from Lake Charles, La., Beaumont and Nederland, Tex., to Port Arthur, Tex., for export, or coastwise movement, similar to those already considered in connection with Leland's I. C. C. No. 1083 and Fonda's I. C. C. No. 16. Following the conclusions reached with respect to those tariffs, we find that the increased rates proposed have been justified.

7. AGENT CHRISTIAN'S I. C. C. NO. 15.

This tariff proposes an increase of 5 cents in the rail and water rates on clean rice, and of 3 cents on rice products, from Texas points to seaboard territory.

In support respondents rely upon the evidence presented in *Rice from Texas and Louisiana*, *supra*. But the tariff here under suspension proposes increased rates to points in southeastern territory to which no increases were proposed in *Rice from Texas and Louisiana*.

We find that the increased rates proposed in this tariff, except those to points in southeastern territory and those proposed on rice products, have been justified.

An order in accordance with the foregoing conclusions will be entered.

**INVESTIGATION AND SUSPENSION DOCKET No. 830.
PETROLEUM TO KENTUCKY STATIONS.**

Submitted October 30, 1916. Decided January 22, 1917.

Proposed increased rates on petroleum and its products from Louisville, Ky., applicable on interstate traffic, from Cincinnati, Ohio, St. Louis, Mo., and other points to stations in Kentucky, found to have been justified.

N. W. Proctor and Edw. D. Mohr for Louisville & Nashville Railroad Company.

R. Walton Moore and Willis H. Fowle for Southern Railway Company and Cincinnati, New Orleans & Texas Pacific Railway Company.

W. H. Miller for Indian Refining Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

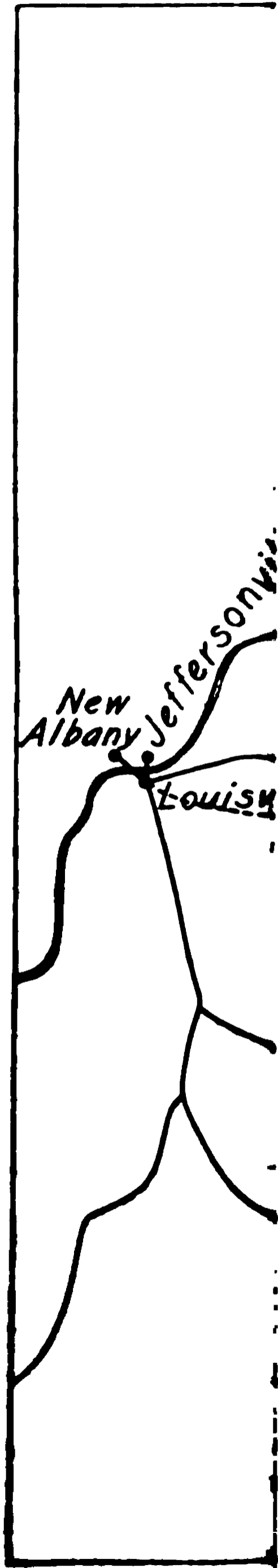
In the tariffs here under consideration, which were suspended upon protest of the Indian Refining Company, the respondent carriers propose certain increases in the rates on petroleum and its products from Louisville, Cincinnati, St. Louis, and other points to various stations in the central and northern part of the state of Kentucky.

Among the important cities and towns in that state that would be affected by the proposed increases are Lexington, Winchester, Paris, Midway, Georgetown, Frankfort, Versailles, Nicholasville; also points in contiguous territory and other points on the lines leading from Louisville and Cincinnati. The principal railroads affected are the Louisville & Nashville, the Cincinnati, New Orleans & Texas Pacific, and the Southern. The proposed increases are the outgrowth of a readjustment of the class and commodity rates from the Ohio River crossings and St. Louis to the territory south of the Ohio River and east of the Mississippi River; one of the chief purposes of the respondents being to correct fourth section departures at points intermediate to the Ohio River crossings and the territory affected. The subjoined map shows the lines of the railways and the principal stations affected with the present and proposed rates from Cincinnati, Louisville, and St. Louis to these destinations. The letters "C" and "L" and the prefix "St. L." before the rates indicate the originating points, Cincinnati, Louis-

ville, and St. Louis, respectively, and the letters "P" and "S" over the rates shown indicate present and suspended rates.

Lexington is the central and pivotal point in the region to which the rates have been increased. It is an important city of approximately 40,000 people, situated in the heart of the blue-grass region of Kentucky. It is served by the Louisville & Nashville, Chesapeake & Ohio, Cincinnati, New Orleans & Texas Pacific, and the Southern. To that point from Cincinnati, Louisville, and St. Louis lower rates on petroleum are maintained than to any of the surrounding towns with which it competes, except Georgetown, which has approximately the same rates, and Frankfort, to which point the rates from Louisville, St. Louis, and Cincinnati are 2 cents lower, 1.2 cents lower, and 2.5 cents higher, respectively, than to Lexington. Frankfort is on the Kentucky River and is served by regular boats from Louisville, and the rates to Frankfort are alleged to have been influenced by that circumstance. In *Lebanon Commercial Club v. L. & N. R. R. Co.*, 35 I. C. C., 204, the history of the rates from Louisville and Cincinnati to the central Kentucky points was quite fully explained, and it need not be restated here. There are no circumstances, however, to which our attention has been directed either by the respondents or by the protestant which justify lower rates on petroleum from Louisville, Cincinnati, or St. Louis to Lexington, or to other junction points in Kentucky, except Frankfort, than are contemporaneously maintained to intermediate points over the fairly direct lines. With the single exception of the rates from Louisville and St. Louis to Frankfort, the respondents, as before explained, propose a readjustment that will correct all violations of the fourth section over the direct lines. From St. Louis and Louisville to Frankfort it is proposed to maintain rates 1 cent lower per 100 pounds than to Shelbyville, an intermediate point, and this adjustment will reduce the present disparity against Shelbyville from 4 cents to 1 cent.

The protestant calls attention to the facts that Ewing is intermediate to Flemingsburg on the route from Cincinnati over the Louisville & Nashville Railroad; that Ewing and other points are intermediate to Maysville, to which point the rate is 7.4 cents; and that Richmond is intermediate to Nicholasville over the Louisville & Nashville Railroad. It is apparent, nevertheless, that the Louisville & Nashville is not the direct route either to Maysville, Flemingsburg, or Nicholasville. Its route to Maysville is 130 miles in length, as compared with the direct route of the Chesapeake & Ohio Railway of 63 miles. Its route to Flemingsburg is 35 miles longer than the direct route through Maysville, and its route to Nicholasville is 48



miles longer than that of the direct line of the Cincinnati, New Orleans & Texas Pacific Railway. The contention of the respondents that the proposed rates over direct lines accord with the fourth section, except as to the rates to Frankfort, is therefore confirmed by the evidence.

The respondents propose a rate of 16 cents per 100 pounds from Cincinnati and Louisville to Paris, Winchester, Lexington, Georgetown, and Midway, while the rates proposed from the same points of origin to Frankfort are 16 and 11 cents, and to Versailles 19 and 16 cents, respectively. To Nicholasville 19 cents is proposed from both Cincinnati and Louisville. While the readjustment proposed has the effect of correcting the existing departures from the fourth section, the rates under that adjustment to the towns named will be materially higher than those at present in effect. The rates here under suspension from St. Louis to all these Kentucky points are constructed by adding 14.2 cents to the lowest rate from any Ohio River crossing. For example, the proposed rate from Louisville to Frankfort is 11 cents and from Cincinnati 16 cents; therefore the rate proposed from St. Louis is the sum of 14.2 cents and 11 cents, or 25.2 cents. The present rates from St. Louis appear to be usually, but not invariably, constructed by adding 15 cents to the lowest rate from any Ohio River gateway. Apparently all the increases have been proposed in the components south of the Ohio River, and the carriers have directed a large part of their testimony to the justification of that course.

The following table shows the short-line distances and the present and proposed rates from Cincinnati and Louisville to the eight principal junction points:

	From Cincinnati.			From Louisville.		
	Dis-	Present	Proposed	Dis-	Present	Proposed
	tances.	rates.	rates.	tances.	rates.	rates.
	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.
Lexington.....	82	10	16	85	10	16
Georgetown.....	70	10	16	88	10	16
Frankfort.....	93	12½	16	65	8	11
Paris.....	80	13	16	106	13	16
Midway.....	80	15	16	80	15	16
Versailles.....	87	15	19	74	15	16
Winchester.....	96	13	16	103	13	16
Nicholasville.....	94	14	19	98	14	19

In comparison with the rates proposed, which apply over hauls of from 65 to 106 miles and an average haul of 86 miles, the carriers have submitted many examples of rates on petroleum and its products now in effect from Louisville, Evansville, Cairo, Paducah, and Memphis to points in Kentucky and Tennessee over comparable

distances on the lines of these respondents and the lines of the Illinois Central, Mobile & Ohio, St. Louis & San Francisco, and other railways.

Among these examples are the following:

	Distance.	Railway.	Rate.
	<i>Miles.</i>		<i>Cents.</i>
Louisville to—			
Elizabethtown, Ky.....	41	L. & N.....	12
Hodgenville, Ky.....	64	I. C.....	21
Shelbyville, Ky.....	31	L. & N.....	12
Glasgow, Ky.....	101	....do.....	32
Leitchfield, Ky.....	72	I. C.....	22
Horse Cave, Ky.....	81	L. & N.....	28
Beaver Dam, Ky.....	109	....do.....	26
Smiths Grove, Ky.....	100	....do.....	30
Franklin, Ky.....	134	....do.....	32
Evansville to—			
Marion, Ky.....	74	I. C.....	19
Earlington, Ky.....	54	L. & N.....	25
Providence, Ky.....	77	I. C.....	20
Hopkinsville, Ky.....	85	L. & N.....	24½
Kuttawa, Ky.....	113	I. C.....	20
Princeton, Ky.....	99	....do.....	25
Guthrie, Ky.....	109	L. & N.....	25
Elkton, Ky.....	120	....do.....	31
Erin, Tenn.....	151	....do.....	28
Carlo to—			
Marion, Ky.....	113	I. C.....	30
Obion, Tenn.....	73	....do.....	24
Dyersburg, Tenn.....	93	....do.....	27
Ripley, Tenn.....	117	....do.....	32
Humboldt, Tenn.....	99	M. & O.....	24
Jackson, Tenn.....	113	I. C.....	27
Princeton, Ky.....	88	....do.....	28
Mayfield, Ky.....	65	....do.....	21
Union City, Tenn.....	55	M. & O.....	20
Kuttawa, Ky.....	74	I. C.....	20
Fulton, Ky.....	48	....do.....	18
Clinton, Ky.....	36	....do.....	16
La Center, Ky.....	19	....do.....	12
Bolivar, Tenn.....	141	....do.....	36
Paducah, Ky., to—			
Benton, Ky.....	22	N. C. & St. L....	15
Mayfield, Ky.....	23	I. C.....	12
Kuttawa, Ky.....	31	....do.....	12
Memphis to—			
Covington, Tenn.....	38	....do.....	19
Ripley, Tenn.....	52	....do.....	22
Brownsville, Tenn.....	56	L. & N.....	26
Holly Springs, Miss.....	45	St. L. & S. F....	20
Obion, Tenn.....	96	I. C.....	25
Dyersburg, Tenn.....	76	....do.....	23
New Albany, Miss.....	79	St. L. & S. F....	22
Corinth, Miss.....	93	So. Ry.....	22
Jackson, Miss.....	85	N. C. & St. L..	22
Humboldt, Miss.....	81	L. & N.....	22
Milan, Tenn.....	93	....do.....	22
Grenada, Miss.....	100	I. C.....	25
Tupelo, Miss.....	105	St. L. & S. F....	24
Fulton, Ky.....	121	I. C.....	25
Water Valley, Miss.....	129	....do.....	25
Mayfield, Ky.....	142	....do.....	25
Durant, Miss.....	153	....do.....	27
Winona, Miss.....	123	....do.....	24
Aberdeen, Miss.....	141	St. L. & S. F....	26
Greenwood, Miss.....	134	Y. & M. V.....	29
Tuscumbia, Ala.....	146	So. Ry.....	29
Paris, Tenn.....	130	L. & N.....	24

The respondents contrast the proposed 16-cent rate from Cincinnati and Louisville to most of these Kentucky junction points, and the maximum rate of 19 cents proposed from Cincinnati to Versailles, which also is proposed from both Cincinnati and Louisville

to Nicholasville, with the rates on petroleum applicable from Memphis to points east thereof on the Southern Railway, where a 16-cent rate is charged for distances of 18 to 20 miles and a 19-cent rate for distances ranging from 38 to 45 miles, while the rate for distances from 80 to 100 miles varies between 23 and 28 cents. The suspended rates are contrasted also with the rates of the Illinois Central Railroad from Cairo to points south of the Ohio River, where a 16-cent rate is charged for but 25 miles, a 19-cent rate for 38 miles, and a 25-cent rate for 78 miles. On the Illinois Central from Louisville a 16-cent rate carries petroleum 44 miles, a 21-cent rate 55 miles, and a 24-cent rate 81 miles. Similar rate comparisons to those last described may be found on the lines of the Louisville & Nashville, extending southwestwardly from Louisville and Evansville. Many other rates for comparable services south of the Ohio River are cited by the respondents; but the comparisons here made are fairly representative of the others.

The rates apply on benzine, coal oil, crude oil, distillate, fuel oil, gas oil, gasoline, kerosene oil, lubricating oil, naphtha, paraffine oil, refined oil, and several other analogous commodities in barrels, half barrels, iron drums, or in metal cans completely cased, straight or mixed carloads, or in tank cars.

Benzine, naphtha, and gasoline are not accepted for shipment, except when in iron or steel drums, iron or steel barrels, or in metal cans securely packed in cases, or in tank cars. The testimony indicates that petroleum and its products in this territory are very largely handled in tank cars owned by the shippers. The carriers pay the shippers three-fourths of a cent per mile for the use of these cars on both loaded and empty car movements. The movement is almost exclusively southbound, and the cars are generally returned empty. The capacity of a large percentage of the cars owned by the protestant in this case is 8,000 gallons. Since a gallon of gasoline is estimated to weigh approximately 6.6 pounds, the shell capacity of these 8,000-gallon tank cars is 52,800 pounds. An increasingly large percentage of the movement to which these rates apply consists of gasoline, and at all the Kentucky points affected by these increases storage facilities exist and are owned either by the protestant or by its competitors, which are the Standard Oil Company of Kentucky, and the C. C. Stoll Oil Company. All the points with which rate comparisons have been made also have storage facilities. Petroleum and its products, in carloads, are rated as fifth class in southern classification; but the rates proposed here are the present sixth-class rates. The evidence indicates that there are many lines in the southeast that apply sixth-class rates on petroleum.

RISK OF HANDLING.

The risk involved in handling shipments by rail composed of volatile oils, benzine, naphtha, and gasoline has led to strict rules as to the placement of cars of these commodities as near the center of the trains as possible. If the length of the train permits, they must be separated from both engine and caboose by at least five cars, and under no circumstances must be placed next to a car of explosives or next to the locomotive. They must be placarded in such manner as to inform all persons of their contents, and care must be exercised to avoid any rough handling. Notwithstanding the rules that have been adopted to insure greater safety in the handling of these materials, the report for the year 1914 of the chief inspector of the bureau for the safe transportation of explosives and other dangerous articles shows that 9 persons were killed and 22 injured; it also shows a property loss of \$125,582, due to accidents resulting from the transportation of petroleum and its products during that year, as compared with 2 persons killed, 87 persons injured, and a property loss of \$23,090, resulting from accidents occurring in the transportation of other dangerous articles.

A witness for the Louisville & Nashville asserted that for many years that company considered the risk attendant upon the transportation of the volatile oils of petroleum so great that it refused to compete for the traffic at competitive points. This policy resulted from a series of accidents, beginning in 1888 and running through a period of years, which occasioned much property loss to this respondent and caused the death of several persons. The rules adopted for the handling of these volatile oils, placarding and placing of the cars, and the requirement that these articles be shipped in iron or steel containers or tank cars have done much to reduce, but by no means have eliminated, the hazard of handling them.

SOURCE OF SUPPLY.

So far as this record shows, there are in the territory here involved three principal competitors dealing in petroleum products, namely, (a) the Standard Oil Company of Kentucky, which purchases its oil from the Standard Oil Company of Indiana's refinery, at Wood River, in the state of Illinois, and has distributing stations at 24 points in this central Kentucky territory; (b) the Stoll Oil Company, which maintains two stations, one at Louisville and one at Lexington, doing a brokerage business in oils and buying its supply from the protestant and other refining companies; (c) the Indian Refining Company, here protestant, which has a refinery at Lawrenceville, in the state of Illinois, and maintains distributing stations at seven of these Kentucky points. At six of them the Standard Oil Com-

pany also maintains stations and competes with this protestant for business. The Standard Oil Company of Kentucky ships a large part of the oil distributed by it in this territory from Wood River by water to Louisville, where large storage tanks have been erected. It is asserted that these circumstances give the Standard Oil Company an advantage over the protestant, which ships by rail from Lawrenceville. This may be true, but the increase in these rates from the Ohio River apparently does not bring about any change in this advantage, whatever it may be. The present proportional rail rate from Wood River to Louisville, applicable on business going to points in Kentucky, is 14.2 cents and from Lawrenceville to New Albany is 7 cents. The present rate applicable to through shipments of oil, Lawrenceville to Georgetown, for example, is 18 cents, made up of the proportional rate of 7 cents to New Albany, a bridge toll of 1 cent, and the 10-cent rate from Louisville to Georgetown. The proposed rate is 23 cents, an increase of 5 cents. The present rate from Wood River is 24.2 cents and the proposed rate 30.2 cents, an increase of 6 cents. The protestant asserts that his business to this territory is increasing.

The respondents call attention to the fact that the suspended tariffs contain many reductions in rates, as well as increases, and that the rates to these Kentucky points are among the lowest rates on petroleum in the south; the rates to Lexington, Georgetown, and Frankfort, particularly, they say, are unusually and unnecessarily low and their maintenance has been the cause of much complaint and criticism from other contiguous localities not so favored. It is asserted that these rates were established at a period when kerosene was one of the principal articles of shipment among the petroleum list; that now gasoline, a higher priced commodity and more hazardous to transport, constitutes a larger percentage of the shipments; that the price of gasoline has greatly increased; that the empty car movement in Kentucky is northbound; that the prevailing industry in this territory is agriculture, and the movement of freight is comparatively small; that the portion of the Southern Railway serving this territory does little more than pay operating expenses, and such measure of prosperity as is enjoyed by the Cincinnati, New Orleans & Texas Pacific and the Louisville & Nashville railroads is not due to traffic to and from the territory involved.

The protestant compares the proposed rate of 16 cents per 100 pounds from Louisville and Cincinnati to Lexington and other points with the present proportional rate of 7 cents from Lawrenceville to New Albany.

The respondents aver that the 7-cent proportional rate is not a normal rate, but, on the contrary, a very much depressed water com-

petitive proportional rate. This 7-cent proportional rate was originally established from Wood River, Ill., a point located near the banks of the Mississippi River, where oil is pumped into barges upon the river and thence floated to Cairo, Ill., and was made applicable over the rail lines to Cairo to meet the water competition. This proportional rate of 7 cents was subsequently extended to apply from St. Louis and East St. Louis to Cairo, and later the lines operating through Evansville and Louisville, in order to secure a share of the business that was moving to the southeast, established on such traffic the 7-cent proportional rate to Evansville and Louisville. Lawrenceville, being intermediate to East St. Louis and also a producing point, the proportional rate was made applicable also from that point to Cairo, Evansville, New Albany, and Jeffersonville. This rate when first established to New Albany and Jeffersonville applied only on traffic destined to points south of the Alabama-Tennessee state line, but recently it was made applicable also on traffic to other points.

For the purpose of showing that the 16-cent rate from Cincinnati and Louisville to Lexington and other points is unreasonably high, the protestant calls attention to the following rates on petroleum and its products:

	Route.	Distance.	Rate.
		Miles.	Cents.
New York to Lexington.....	P. R. R.; C., N. O. & T. P.	831	28.9
Philadelphia to Lexington.....	do.....	738.4	28.9
Baltimore to Lexington.....	do.....	718.8	28.9
Norfolk, Va., to Lexington.....	N. & W.; C., N. O. & T. P.	793.7	22.1
Whiting, Ind., to Lexington.....	C. & O. of I.....	346.9	22.5
Oil City, Pa., to Lexington.....	P. R. R.; P., C., C. & St. L.; C., N. O. & T. P.	823.7	17
Baton Rouge, La., to Lexington.....	So.; Y. & M. V.; I. C.....	844	22.5
Mercanz, La., to Lexington.....	do.....	761.8	22.5
Cincinnati, Ohio, to Troy, Ohio.....	C., H. & D.....	79.2	7.9
Lawrenceville, Ill., to Eldorado, Ill.....	C., C., C. & St. L.....	81.6	7.7
Louisville, Ky., to Clear Creek, Ind.....	C., I. & L.....	100.1	9.9
Salt Lick, Ky., to Louisville.....	C. & O.....	137.5	8.4
Louisville, Ky., to Mitchell, Ind.....	C., I. & L.....	63.3	9.9
Cincinnati, Ohio, to Tadmor, Ohio.....	C., H. & D.....	69.5	8
Salt Lick, Ky., to Ashland, Ky.....	C. & O.....	70.2	8.4
Lawrenceville, Ill., to Westville.....	C., C., C. & St. L.....	94.4	7.6
Louisville to Stinesville, Ind.....	C., I. & L.....	116.5	9.9
Lawrenceville to Elthian, Ill.....	C., C., C. & St. L.....	114.6	7.8
Ashland, Ky., to—			
Chilesburg, Ky.....	C. & O.....	115.6	15.1
Hedges, Ky.....	do.....	97.6	15.1
Cincinnati to Sydney, Ohio.....	C., H. & D.....	99.2	8.4
Lawrenceville to Danville.....	C., C., C. & St. L.....	101.2	7.4
Cincinnati to Johnson, Ohio.....	C., H. & D.....	66.6	8
Lawrenceville, Ill., to Paris, Ill.....	C., C., C. & St. L.....	63.6	6.4
Ashland, Ky., to Farmer, Ky.....	C. & O.....	66.4	11.3
Louisville to Harrodsburg, Ind.....	C., I. & L.....	91.9	9.9
Lawrenceville, Ill., to Georgetown, Ill.....	C., C., C. & St. L.....	89.8	7.6
Ashland, Ky., to—			
Mount Sterling, Ky.....	C. & O.....	90.3	15.1
Preston, Ky.....	do.....	78.4	12.3
Louisville to Ellettsville, Ind.....	C., I. & L.....	111.2	9.9
Cincinnati to Bothina, Ohio.....	C., H. & D.....	111.9	9.5
Louisville, Ky., to Gosport, Ind.....	C., I. & L.....	120.4	9.9
Ashland, Ky., to Brighton, Ky.....	C. & O.....	112.7	15.1
Charles Town, W. Va., to Morehead, Ky.....	do.....	124.1	15.1
Lawrenceville, Ill., to St. Joseph, Ill.....	C., C., C. & St. L.....	122.5	7.82
Ashland, Ky., to Winchester, Ky.....	C. & O.....	104.2	15.1

The protestant also made many other comparisons of rates on petroleum in central freight association territory and along the line of the Chesapeake & Ohio Railway in Kentucky; such comparisons showing that the rates on petroleum applied in central freight association territory are materially lower than the proposed rates from the Ohio River crossings to points in Kentucky over comparable distances.

The respondents assert, however, that they could not operate their railways on the low scale of rates maintained in the central freight association territory; that the lower rates shown to points on the Chesapeake & Ohio represent little or no movement; and that comparisons of the kind here offered of rates in other territories and over other railways where the topographical, traffic, and other conditions are unlike those in the territory affected are of little or no value in determining what are reasonable rates to be here applied. In support of these contentions the respondents submit a comparison of the number of tons handled 1 mile per mile of road on lines north of the Ohio River with the number of tons handled per mile of road on the Louisville & Nashville system and its several branches over which traffic to the territory involved in this proceeding is handled, also a similar comparative showing for the Southern Railway:

Fiscal year ended June 30, 1915.

South of the Ohio River:		Tons 1 mile per mile of road.
L. & N. R. R.—		
Lexington branch.....		521, 878
Shelby branch.....		75, 861
Louisville & Atlantic division.....		140, 909
Entire system.....		1, 021, 335
Southern Railway.....		598, 142
C. F. A. territory:		
C, H. & D.....		1, 447, 984
C, C, C. & St. L.....		1, 877, 225
B. & O.....		2, 860, 005
C. & O.....		3, 435, 061

The respondents also submit a table showing revenues and expenses for the year ending June 30, 1914, on the roads operating south of the Ohio River in the territories designated as the southern district and a similar showing respecting the roads in the eastern district:

Items—Per mile of road operated.	Roads in class 1.	
	Eastern district.	Southern district.
Number of revenue tons hauled 1 mile.....	2, 542, 966	837, 923
Freight revenue.....	\$15, 423	\$6, 915
Total operating revenue.....	21, 874	10, 139
Operating expenses.....	16, 488	7, 478
Net operating revenue.....	5, 426	2, 661
Income from operation.....	4, 497	2, 137
Ratio of operating expenses to revenue.....	75. 19	73. 76

The protestant calls attention to the fact that the movement of petroleum to this territory is largely a tank-car movement, and that the claims for loss and damage on the commodities so transported are relatively small; that the present rates have been in effect for a long period of time, and there exists a strong presumption in favor of their reasonableness; that the increases, particularly to Lexington and Georgetown, are pronounced and material. It can not be gainsaid, however, that the two cities, Lexington and Georgetown, have long enjoyed a basis of rates on these commodities lower than the rates on like traffic to contiguous localities similarly situated. The suspended rates do not appear to be unreasonable as compared with other rates in the same territory over the same lines for comparable distances. None of these towns have protested against the suspended rates, and the protestant has not shown that its interests will be seriously affected by their establishment. Competitors of the protestant for traffic to this territory have made no protest against the increased rates, although their interest is the same as that of this protestant. The suspended tariffs contain rates from New Orleans and Baton Rouge, in the state of Louisiana, Vicksburg, in the state of Mississippi, and several other points; but no protest has been made against any of the rates from any points, except the Ohio River crossings and St. Louis. The changes in the rates from other points are alleged to have been made for the purpose of maintaining the existing relationship between the rates from such points and the Ohio River crossings.

Upon consideration of all the facts of record, we are of the opinion and find that the carriers have justified the proposed increased rates to all the points in the territory affected by the tariffs under suspension, except Ewing. The proposed rates to that point both from Cincinnati and from St. Louis are clearly not in harmony with the proposed rates to contiguous points. The order of suspension will be vacated, but we shall expect the carriers to correct the Ewing rates, within 30 days from the date of the order herein, to a level not higher than the present rates applicable at that point from the crossings just mentioned.

43 I. C. C.

No. 8418.¹
RAILROAD COMMISSION OF LOUISIANA
v.
ARANSAS HARBOR TERMINAL RAILWAY
COMPANY ET AL.

Submitted December 21, 1916. Decided January 26, 1917.

Petitions of attorney general of Texas, Railroad Commission of Texas, and others, for reopening and leave to intervene granted; for vacation of order of July 7, 1916, denied.

B. F. Looney and Luther Nickels for the state of Texas and the Railroad Commission of Texas.

Edward P. Byars for Fort Worth Freight Bureau, Texas Brick Manufacturers Association, Texas Wholesale Fruit & Produce Dealers Association, and Chico Crushed Stone Company.

S. H. Cowan for Texas Industrial Traffic League, Amarillo and Panhandle Traffic Association, Acme Cement Company, and others.

H. B. Dorsey for Texas Grain Dealers Association.

H. D. Driscoll for Waco Chamber of Commerce and Texas Butter, Egg & Poultry Association.

E. Eikel for Dittlinger Lime Company.

H. H. Haines for Galveston Commercial Association.

Paul Kayser for Houston Chamber of Commerce, South Texas Cotton Oil Company, and others.

G. S. Maxwell for Texas Industrial Traffic League and Dallas Chamber of Commerce & Manufacturers Association.

J. A. Morgan for Houston Chamber of Commerce.

E. C. Nettels for Chamber of Commerce, Post, Tex., and Postex Cotton Mills.

W. S. Pawkett for San Antonio Freight Bureau.

F. E. Potts for Texarkana Pipe Works and San Antonio Sewer Pipe Works.

N. A. Stedman for Texas Industrial Traffic League.

¹ This report also embraces No. 8918, Railroad Commission of Louisiana v. St. Louis Southwestern Railway Company et al.; No. 8290, Railroad Commission of Louisiana v. St. Louis, San Francisco & Texas Railway Company et al.; and Investigation and Suspension Docket Nos. 710, Eastern Texas Class Rates, and 729, Class Rates to Shreveport, La.

J. E. Bryant for city of Amarillo, Tex., Panhandle Traffic League, and *J. E. Bryant Company*.

M. C. Nobles for Nobles Brothers Grocery Company.

D. P. Seay for Morrow Thomas Hardware Company.

Barney Smith for Texas Rolling Mill Company.

A. C. Fonda, H. M. Garwood, J. S. Hershey, John B. Payne, J. W. Terry, Gentry Waldo, and J. L. West for all Texas carriers, defendants.

George T. Atkins, jr., for Shreveport Chamber of Commerce.

REPORT OF THE COMMISSION ON PETITIONS FOR REOPENING.

HALL, Commissioner:

The history of these proceedings is set forth in *Railroad Commission of La. v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31; *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 34 I. C. C., 472; and *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83.

In our report in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, *supra*, decided July 7, 1916, we found, in brief, that the class rates and rates on certain specified commodities between Shreveport, La., and points in Texas were unreasonable and unduly prejudicial to Shreveport as compared with rates for like distances in Texas; and that the application to the transportation of property within Texas of classification rules different from and minimum carload weights lower than those applicable to transportation of like property between Shreveport and Texas points was unduly prejudicial to Shreveport. Reasonable maximum rates between Shreveport and Texas points were prescribed and the undue prejudice found to exist was ordered removed, the order accompanying the report becoming effective November 1, 1916.

Subsequent to the promulgation of this report and order, but before the effective date of the latter, petitions were filed on behalf of the state of Texas, the attorney general of Texas, and various localities and commercial interests of Texas, asking for the suspension of the tariff purporting to comply with our order and for a full hearing in respect of the rates contained in that tariff.

Informal hearing was had October 19 and 20, 1916, on these requests for suspension. At this hearing full opportunity was afforded for the presentation of objections to the proposed rates. As a result we suspended the operation of items in the tariff naming rates on several commodities pending an investigation of the propriety thereof; but a majority of the Commission declined to suspend the tariff in its entirety.

Some of the petitions asked that these proceedings be reopened. Upon consideration thereof we ordered that oral argument be had on December 6, 1916, to determine (1) whether or not these proceedings should be reopened, and, if so, for what purposes and to what extent; and (2) if reopened, what further parties, if any, should be permitted to intervene.

Argument was had; numerous exhibits were submitted; and briefs were filed, both then and later. In so far as was possible within the limited time at our disposal every interested person, association, and community was heard, and all briefs and exhibits tendered were received.

It is impracticable to restate here all that was urged in opposition to or in support of our report and order of July 7, 1916, and the tariff purporting to comply therewith. The attorney general and assistant attorney general of Texas appeared on behalf of that state and of the Railroad Commission of Texas. They challenge our jurisdiction under the act to make the order in question, but say that, assuming there was no question concerning jurisdiction, additional evidence bearing upon the issues in this proceeding will be submitted if the proceedings are reopened. They further urge that we suspend the tariff purporting to comply with our order of July 7, 1916. In addition to what was said on behalf of the state of Texas as a whole, individuals, associations, and communities representing various interests in Texas presented what they conceived to be instances of hardship which would result from the operation of the tariff filed pursuant to our order.

The position of the carriers and of the representative of the Shreveport Chamber of Commerce is that our jurisdiction is beyond question; that our order is supported by ample evidence; that it is appropriate to effect the proper disposition of the issues presented; and that the tariff filed by the carriers in response thereto complies with its terms. On behalf of the carriers it was stated that occasional instances of hardship where the rates contained in the tariff under attack are on a higher level than corresponding rates into Texas from points in Oklahoma, for example, will be eliminated by increasing the latter rates, which are, it is said, at present lower than is just and reasonable. We have recently been advised that tariffs purporting to eliminate these alleged instances of hardship have been filed.

The Railroad Commission of Louisiana, complainant in this proceeding, advises that it "will not appear in opposition to application of Texas authorities and shippers to reopen *Shreveport Rate Case* or to oppose any new parties to the case if it is reopened."

These proceedings were discussed at length in our thirtieth annual report to the Congress, submitted December 1, 1916, at page 80 et seq.

After quoting from our report of July 7, 1916, *supra*, we said, at page 89:

We call to mind once more the fact previously noted, that this Commission has not reached out in a spirit of aggression to lay its hands on situations involving the principles of the *Shreveport Case*. While we have decided over 50 of such cases, and more are being presented to us from time to time, we have dealt with them in the regular line of official duty. * * *

The vital question is, What is the nature of the problem, and through what agencies and by what methods can that problem best be solved in the interest of the whole public?

* * * In the *Shreveport Case* proper, the history of which has been recited above, we had the assistance of the authorities of only one of the states concerned in addition to counsel for interested parties. In other cases, involving the same principles, we have had the active cooperation of the respective state commissions. This cooperation was entirely voluntary and without status under the act to regulate commerce, except in so far as the respective state commissions acted in the capacity of interested parties of record.

In our report to the Congress we also said, at page 87:

At the hearing on the original complaint counsel for complainants stated of record that the Railroad Commission of Texas had been invited to participate in the proceeding, but had made no reply. At subsequent hearings, as stated in our reports, 34 I. C. C., 472, 475, 41 I. C. C., 83, 86, representatives of the Texas commission were present, but took no part in the proceedings.

We are not advised as to the reasons prompting the Railroad Commission of Texas to refrain from participation in these proceedings until after the issuance of our report and order of July 7, 1916. Presumably they were sufficient for that body in the exercise of its discretion, and it is not our province to consider them. There is no provision in the act for compelling any party to intervene in a proceeding before us, and such participation would necessarily have been entirely voluntary.

The situation now presented is that the state of Texas and the Railroad Commission of Texas, represented by the constituted authorities of that state, wish to have these proceedings reopened, on the ground that new and material evidence will be submitted and that the authorities of the state will cooperate with us in bringing about a just and reasonable settlement of this question. The authorities of the state of Louisiana do not object to such a reopening.

The Texas authorities appreciate the fact that as the tariff under attack became effective November 1, 1916, except as to items suspended by us as noted above, we have no power to suspend its operation, but urge that the same effect, as to intrastate traffic, can be secured by vacating and setting aside our order of July 7, 1916. With this suggestion we are unable to agree. Our order was made after careful consideration, upon the basis of a voluminous record. To

vacate this order might have the effect of reinstating many of the discriminations formerly existing which have been shown to be real and material and of long standing. Argument has been had since that order was entered, but no further evidence in the strict sense of the word has been submitted. In the absence of a showing of error in our report and order, we are of opinion that the order should stand pending the further proceedings now contemplated.

The desirability of cooperation with the state authorities is, however, obvious. Under the circumstances recited above we are of opinion and conclude that these proceedings should be reopened for further hearing, the order of July 7, 1916, to remain in full force and effect pending such hearing, and decision thereon.

An appropriate order will be entered

No. 7080.
RYEGATE PAPER COMPANY
v.
BOSTON & MAINE RAILROAD ET AL.

Submitted December 9, 1915. Decided January 22, 1917.

Complaint against rates on paper from East Ryegate, Vt., to Northbridge, Mass., New Haven, Conn., and Albany, N. Y., dismissed.

O. M. Rogers for complainant.

W. A. Cole for Boston & Maine Railroad.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complaint in this case alleges that the sixth-class rates of 17 cents per 100 pounds, charged by defendants on certain carloads of paper from East Ryegate, Vt., to Northbridge, Mass., New Haven, Conn., and Albany, N. Y., during the period from February 23, 1912, to September 23, 1913, inclusive, were unreasonable and unjustly discriminatory. Reparation is asked and rates for the future not exceeding 15 cents per 100 pounds. The complaint was not filed until July 6, 1914, but the claims, based on the shipments involved that were delivered more than two years before, were presented to the Commission informally within two years after the shipments were delivered.

A hearing was had on September 14, 1914, which was adjourned by agreement of the parties because of a general readjustment of defendants' rates on paper that was then being made. Subsequently, on August 25, 1915, complainant's attorney, who had appeared at the hearing, advised us by letter that he understood that the Boston & Maine Railroad had readjusted the "scale of rates on traffic on which complaint was made," and that he desired to try complainant's right to reparation on the shipments specified in the complaint. A supplemental hearing accordingly was held on December 9, 1915. Defendants were represented but not complainant.

The facts necessary to base an award of reparation are not in evidence, and the complaint will be dismissed.

No. 7479.
HENRY H. CARTER
v.
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILWAY COMPANY.

Submitted January 20, 1916. Decided January 22, 1917.

1. Following *Railroad Commission of Nevada v. S. P. Co.*, 36 I. C. C., 250, we find that it was not unreasonable for defendant to require a passenger desiring the exclusive use of a Pullman drawing-room from St. Paul, Minn., to Chicago, Ill., to purchase two railroad tickets.
2. Allegation with respect to an alleged illegal excess baggage charge not considered, as not all of the proper parties are made defendants.
3. Complaint dismissed.

Henry H. Carter for complainant in person.
A. H. Lossow for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Boston, Mass. By complaint, filed November 11, 1914, he alleges that the requirement of defendant that a passenger desiring the exclusive use of a Pullman drawing-room must present two first-class railroad tickets is unreasonable and unjustly discriminatory. He also challenges the legality of a tariff rule under which a passenger holding two railroad tickets is not permitted to check free more baggage than a passenger holding only one ticket. Reparation is asked.

On September 10, 1914, complainant's wife started from St. Paul, Minn., to Boston with the remaining portion of a through ticket from San Francisco, Cal., to Boston. Under tariffs legally applicable complainant was not permitted to procure a Pullman drawing-room for the exclusive use of his wife over defendant's line from St. Paul to Chicago, Ill., until he purchased for her an additional railroad ticket between those points, which he did at a cost of \$8. The correct fare was \$8.05.

It is the general practice of railroads throughout the country to require a passenger desiring the exclusive use of a drawing-room in a sleeping car to purchase two railroad tickets. Such a rule was found reasonable in *Railroad Commission of Nevada v. S. P. Co.*, 36 I. C. C., 250, and there is nothing in this record that would warrant a different conclusion.

The baggage involved weighed 225 pounds. It was checked through from St. Paul to Boston. Defendant's baggage tariff in effect at the time, which was concurred in by its eastern connections and which contained joint excess baggage rates from St. Paul to Boston, provided as follows:

BAGGAGE ALLOWANCE.

SECTION 13. Subject to limitation as shown in sections 14 and 16, page 10 (refers to limit of weight of single pieces and baggage of excess size), 150 pounds of baggage not exceeding \$100 in value will be checked without charge for each adult passenger, and 75 pounds not exceeding \$50 in value, for each child traveling on a half ticket.

A charge of \$3.55, apparently intended to cover the transportation of the excess baggage from St. Paul to Boston, was collected at the latter point. We are unable to verify this charge. The joint excess baggage rates from St. Paul to Boston are not the same over all routes and the record does not show the route traveled beyond Chicago. The charge on 75 pounds of excess baggage from St. Paul to Boston would have been, over certain routes, somewhat higher, and over others, somewhat lower than that collected.

Complainant does not attack the measure of the charge assessed but contends that having paid double fare he was entitled to check 225 pounds of baggage free of charge. As the carriers east of Chicago are not parties to this proceeding this contention will not be considered. However, the rule above quoted is open to criticism in that it prescribes the maximum weight and value of baggage which will be checked free for each passenger instead of for each ticket.

An order will be entered dismissing the complaint.

43 I. C. C.

No. 8252.

WHELAND COMPANY

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 542.

Submitted December 9, 1915. Decided January 22, 1917.

1. Claim for reparation on a less-than-carload shipment of sawmill machinery from Chattanooga, Tenn., to Blanks, La., denied.
2. Carriers' tariff rules should clearly indicate that the charge for a less-than-carload shipment shall not exceed the charge for a minimum carload of the same freight at the class rate or at the commodity rate applicable thereto. Complaint dismissed.

O. L. Bunn for complainant.

Edward H. Hart for Alabama Great Southern Railroad Company and New Orleans & Northeastern Railroad Company.

W. W. Stine for New Orleans, Texas & Mexico Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of sawmill machinery at Chattanooga, Tenn. By complaint, filed August 7, 1915, it alleges that the rate charged by defendants for the transportation of a less-than-carload shipment of sawmill machinery shipped August 1, 1913, from Chattanooga to Blanks, La., was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked and the establishment of a reasonable rate for the future. The shipment moved from Chattanooga more than two years before formal complaint was presented, and the freight charges were paid at Chattanooga on August 12, 1913. Whether such payment antedated delivery at destination or whether such delivery was made within two years of the filing date of the formal complaint, is not disclosed. However, it was suggested on hearing that shipments from and to the point in question ordinarily should be delivered within seven days. The claim was presented to the Commission informally April 25, 1914, and complainant was notified by the Commission September 8, 1914, that efforts to adjust it in-

formally had failed. Formal complaint was therefore not presented within a reasonable time after such notice to complainant. However, the disposition herein made of the complaint renders unnecessary determination of the statutory question.

The shipment consisted of 10,900 pounds of sawmill machinery and moved over defendants' lines through New Orleans, La. Charges were collected in the sum of \$159.14 at the first-class rate of \$1.46 per 100 pounds, governed by the western classification. A carload commodity rate of 61 cents per 100 pounds, minimum 24,000 pounds, was in effect over the route of movement at which the charges would have been \$146.40. The governing classification provided:

The charge for a less-than-carload shipment must not exceed the charge for a minimum carload of the same freight at the carload rating.

Construing this rule to prescribe the charge for a minimum carload at the commodity carload rate as the maximum charge for a less-than-carload shipment of the same freight, complainant contends, and defendants admit, that the shipment was overcharged in the sum of \$12.74 and we so find. It is observed, however, that the term "carload rating" is used and the rule of the classification should be reconstructed to clearly fix as a maximum for a less-than-carload shipment the charge for a minimum carload of the same freight at the class rate or at the commodity rate, whichever may apply.

When the shipment moved a carload commodity rate of 29 cents per 100 pounds applied on sawmill machinery from Chattanooga to New Orleans and a rate of 21 cents from New Orleans to Blanks, making a combination of 50 cents. That portion of Alabama Great Southern Railroad Fourth Section Application No. 542 wherein authority is sought to maintain a through rate on machinery from Chattanooga to Blanks in excess of the aggregate of intermediate rates to and from New Orleans, La., and to and from other intermediate points was heard with the complaint. The fourth section question here in issue was recently passed upon in *Through Rates to Points in Louisiana and Texas*, 38 I. C. C., 153, and relief was denied. On March 12, 1916, defendants established a joint rate of 50 cents per 100 pounds on sawmill machinery in carloads from Chattanooga to Blanks. This rate is still in effect and is satisfactory to complainant.

With respect to the question of reparation the record shows that complainant did not bear the freight charges on the shipment in issue. They were borne by the consignee, who is not a party to the proceeding, and any claim presented by the consignee would now be barred.

An order will be entered dismissing the complaint.

No. 8211.
GEORGE L. MESKER & COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted January 6, 1916. Decided January 22, 1917.

Rate of 28 cents per 100 pounds charged on a carload of structural iron from Evansville, Ind., to Bowling Green, Ky., not found to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Charles Mayer, jr., and G. M. Stephen for complainant.
William A. Northcutt for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is George L. Mesker, engaged in the manufacture and sale of iron and steel articles at Evansville, Ind., under the trade name of George L. Mesker & Company. By complaint, filed July 29, 1915, he alleges that the rate of 28 cents per 100 pounds charged by defendant for the transportation of a carload of structural iron, weighing 55,600 pounds, shipped December 6, 1913, from Evansville to Bowling Green, Ky., was unreasonable and unjustly discriminatory. Reparation is asked.

Bowling Green is a local station on the Louisville & Nashville Railroad, 113 miles south of Louisville, Ky., 73 miles north of Nashville, Tenn., and 159 miles southeast of Evansville, by way of defendant's line through Guthrie, Ky. The shipment moved over that route and charges were collected in the sum of \$155.68 at the class I rate of 28 cents per 100 pounds, which is based on the distance scale applying generally on defendant's lines.

The rate assailed is compared with rates of 12 cents and 15 cents from Louisville and Cincinnati, respectively, to Bowling Green and Nashville, but it is observed that these are proportional rates applying on traffic originating beyond Louisville and Cincinnati. Reference is also made to a 12-cent rate from Evansville to Nashville, and the contention of complainant is that the rate to Bowling Green should not exceed that amount. No other evidence respecting the reasonableness of the rate assailed was adduced, and only general statements were made concerning the question of discrimination.

Defendant offers for comparative purposes rates to Bowling Green from Nashville, Knoxville, and Memphis, Tenn., Birmingham and Montgomery, Ala., and New Orleans, La. Like the comparisons offered by the complainant, these rates are of little help in determining the reasonableness of the rate in issue.

Upon the record we find that the rate assailed is not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial, and the complaint will be dismissed.

No. 8264.

SWIFT & COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted December 13, 1915. Decided January 22, 1917.

1. Rate of 18 cents per 100 pounds charged on sheep in carloads from South Omaha, Nebr., to South St. Joseph, Mo., not shown to have been unreasonable.
2. For the transportation of sheep from South Omaha and other primary sheep markets defendant's tariffs should provide that, if a double-deck car is ordered and in lieu thereof two single-deck cars are furnished, they may be used at the rate and minimum weight applicable to the double-deck car, provided a period of two days, exclusive of day of notice, is allowed defendant in which to furnish the car ordered.

R. D. Rynder for complainant.

L. C. Mahoney for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the packing-house business, with its principal office at Chicago, Ill. By complaint, filed August 25, 1915, it alleges that the charges collected by defendant for the transportation of 30 carloads of sheep shipped from South Omaha, Nebr., to South St. Joseph, Mo., in September and October, 1913, were unreasonable. Reparation is asked and the establishment of a tariff rule to the effect that if the carrier is unable to furnish a double-deck car when ordered by a shipper it should furnish,

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in lieu thereof, two single-deck cars at the rate and minimum weight applicable to the kind of car ordered. Rates are stated in cents per 100 pounds.

The sheep came from Utah, Idaho, and Wyoming, but were purchased by complainant at South Omaha. The shipments moved in single-deck cars and weighed from 9,000 pounds to 9,500 pounds per car. For the purpose of the transportation complainant ordered fifteen 36-foot double-deck cars. Defendant could not supply such cars and furnished 30 single-deck cars. It is admitted that in each instance the sheep actually loaded in two single-deck cars could have been loaded in one double-deck car.

The rate applicable to live sheep in single-deck cars from South Omaha to South St. Joseph was and is 18 cents, minimum 12,000 pounds; the rate applicable in double-deck cars was and is 14½ cents, minimum 22,000 pounds. A proportional rate of 13 cents applied and applies on shipments in double-deck cars originating beyond South Omaha. In each instance there is an additional switching charge of 25 cents per car at South Omaha. The shipments were charged for on basis of the 18-cent rate. Had the equipment ordered been furnished, the proportional rate of 13 cents would have applied. Complainant's contention is that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at the rate provided for shipments in double-deck cars.

Live stock bought at South Omaha, not intended for slaughter there, is generally reshipped on the day of purchase in order to avoid shrinkage, yardage charge, and the expense of watering and feeding. As it is the practice to move sheep from markets in double-deck cars, carriers endeavor to have such cars available. When the shipments moved defendant's tariff carried a so-called two for one rule applicable only in Missouri, i. e., on shipments of sheep within the state, when double-deck cars could not be procured, two single-deck cars could be used at charges not exceeding the charges that would apply on a double-deck car. Effective November 25, 1913, a similar rule was established to apply from South Omaha to South St. Joseph. This action was in line with expressed views of the Commission. *Carstens Packing Co. v. S. P. Co.*, 28 L. C. C., 236.

A finding that defendant should have maintained during the period between September 17, 1913, and October 2, 1913, a two for one rule concerning single-deck cars must necessarily bear a qualification as to the time within which to comply with the request for a special car before the rule becomes applicable. The period in the rule now published by defendant is five days. Complainant states that it is necessary to ship the sheep on the day they are purchased

and in the instant case the shipments were so made. For the transportation of sheep carriers should furnish the equipment ordered within a reasonable time or supply two cars at the rate and minimum weight attached to the car ordered. *Corn Belt Meat Producers Assn. v. C., B. & Q. R. R. Co.*, 17 I. C. C., 533, 535. That double-deck cars should be furnished at all times immediately upon request is not reasonable. Omaha is, however, one of the primary sheep markets and we believe that under the circumstances existing at such markets a period of two days, exclusive of the day of notice, would be a reasonable time within which to furnish a double-deck car, if ordered, or in lieu thereof two single-deck cars at the rate and minimum weight applying to the car ordered.

The 18-cent rate is alleged to be intrinsically unreasonable. The testimony offered in substantiation of this is general and insufficient to establish the claim. The 18-cent rate on 12,000 pounds yields 16.12 cents per car-mile, which is approximately 4 cents less than the average car-mile earning of the defendant as shown by its annual report.

We find that an award of reparation is not justified. No order will be made for 60 days. Unless the defendant within that time modifies its tariffs to provide for a period of two days, exclusive of the day of notice, instead of five days, as now published, within which to furnish double-deck cars, we shall again take up the case with a view to making a definite finding and order.

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No. 8503.¹

SAND POINT LUMBER & POLE COMPANY
v.
GREAT NORTHERN RAILWAY COMPANY.

Submitted May 26, 1916. Decided January 22, 1917.

1. Rates on cedar posts and lumber in carloads from points in Washington and Idaho to certain destinations in Montana and North Dakota not shown to have been or to be unreasonable, but found to have been unjustly discriminatory.
2. Rate on lumber from Springston, Idaho, to Antelope, Mont., found to have been and to be unreasonable and reasonable maximum rate prescribed for the future. Reparation awarded.

W. D. Ridle and E. M. Fronk for complainants.

John F. Finerty for Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants in this consolidated proceeding are an individual, a firm, and three corporations, dealing in lumber and forest products at points in Washington and Idaho. By complaints, filed December 2, 1915, January 17, 1916, February 15, 1916, and March 11, 1916, they allege that the rates charged by defendants for the transportation of numerous carloads of cedar posts and of lumber shipped from points in Idaho and Washington to points on the so-called Plentywood and Snowden branches of the Great Northern Railway in the eastern part of Montana, and to Alexander, N. Dak., on a branch leading from the Snowden branch, during the two-year periods immediately preceding the filing of the complaints, were unreasonable and unjustly discriminatory. Reparation is asked and the establishment of reasonable and nondiscriminatory rates for the future. Rates are stated in cents per 100 pounds.

The points of origin are located on the lines of the Great Northern Railway, hereinafter called the Great Northern, the Oregon-Washington Railroad & Navigation Company, hereinafter called the

¹ The proceeding also embraces complaints in—No. 8503 (Sub-No. 1), *Orrin S. Good v. Same*; No. 8503 (Sub-No. 2), *Spokane Lumber Company v. Same*; No. 8503 (Sub-No. 3), *Spokane Lumber Company v. Same*; No. 8503 (Sub-No. 4), *Hogan & West v. Great Northern Railway Company et al.*; No. 8503 (Sub-No. 5), *Orrin S. Good v. Great Northern Railway Company et al.*; No. 8503 (Sub-No. 6), *Sand Point Lumber & Pole Company v. Great Northern Railway Company et al.*; No. 8503 (Sub-No. 7), *Lindsley Brothers Company v. Same*.

Oregon-Washington, the Chicago, Milwaukee & St. Paul Railway, and the Idaho & Washington Northern Railroad. With the exception of the rate from Springston, Idaho, the only point on the Oregon-Washington involved, which rate will be specifically referred to later, the rates in issue are the same as the rates on cedar posts and lumber in carloads from Spokane, Wash., to the destinations in question. The Spokane rates to the junction points between the two branches and the Great Northern's main line were and are 33 cents; to points on the Plentywood branch, 36 cents; and to Lambert, Mont., on the Snowden branch, and to Alexander, 34 cents. When the shipments moved 33-cent rates applied on mixed carloads of lumber and pine doors to the junction points and also to the branch-line points. This adjustment made it possible to obtain the junction point rate on a carload shipment of lumber to a branch-line point by placing two or more pine doors in the car. The branch-line rates on mixed carloads of lumber and doors have since been increased to the level of the rates on lumber in straight carloads.

There were no doors in these shipments, and charges were collected at a rate of 36 cents to points on the Plentywood branch and at a rate of 34 cents to points on the Snowden branch and to Alexander. It is alleged that these rates were unreasonable to the extent that they exceeded 33 cents. Complainants observed that the rate on lumber from the so-called coast group of lumber-shipping points was 40 cents both to these branch-line points and to junction points between the branch line and the main line, and that at the present time the Spokane rates to the junction points are 7 cents less than the rates from the coast, while they are only 4 cents less to points on the Plentywood branch and 6 cents less to points on the Snowden branch and also to Alexander. The average distance traversed by the shipments to stations on the Plentywood branch was approximately 820 miles, yielding at the 36-cent rate 8.78 mills per ton-mile. To the Snowden branch and to Alexander the average haul is approximately 790 miles, and the ton-mile earnings under the 34-cent rate, 8.6 mills. Complainants cited various points in Montana on main lines of roads other than the Great Northern to which rates of 33 cents apply from Spokane for distances approximately the same as those here involved. The same situation prevails on the Great Northern, where the 33-cent rate from Spokane applies for the long haul to Denver, Colo. The only branch-line rate cited by complainants was a rate of 33 cents maintained by the Northern Pacific Railway from Spokane to Sidney, Mont. The latter point is also served by the Snowden branch of the Great Northern.

The discrimination complained of was alleged to result from the fact that complainants' larger competitors, who manufacture doors,

could include them in their carload shipments of lumber and obtain a lower rate than that available to complainants on straight carloads of lumber. The Great Northern stated that the maintenance of the rate on mixed carloads of lumber and doors lower than the rate on lumber was the result of an error in tariff publication which had now been corrected. That defendant testified that the instances here presented were exceptions to the general rule that rates from Spokane to points on branch lines of the Great Northern in Montana are made arbitraries over the rates to junction points, and cited various branch-line points to which the arbitraries over the junction point rates are the same as or greater than those here in question. It was asserted that the rates to points on the Snowden branch lower than the rates to points on the Plentywood branch are forced by competition with the Northern Pacific Railway at Sidney.

Springston is approximately 47 miles from Spokane. One carload of lumber was shipped by complainants Hogan & West on May 28, 1914, from that point to Antelope, Mont., on the Plentywood branch. Charges were collected thereon in the sum of \$181.44. Neither the weight of the shipment nor the rate charged was specified, but complainants believe that the rate charged was the combination on Spokane and contend that, as Springston is physically within the Spokane group, the rate charged was unreasonable to the extent it exceeds the Spokane rate. At the hearing the attorney for the Great Northern called attention to the fact that the matter of the propriety of joint rates from Oregon-Washington mills to points on the Great Northern and Northern Pacific in Montana was before the Commission in *Eastern Oregon Lumber Producers Asso. v. R. R. Co.*, 39 I. C. C., 316, then pending, and indicated that the decision in that case should control that portion of the present case which involves the shipment from Springston to Antelope. In the case cited combination rates on lumber from points on the Oregon-Washington in eastern Oregon, approximately 340 miles south of Spokane, to points on the Great Northern and the Northern Pacific Railway in Montana, from 15 cents to 25 cents higher than the rates from Spokane, were found to be unreasonable and defendants therein were ordered to establish joint rates not to exceed the Spokane rates by more than 5½ cents per 100 pounds. The Spokane group rates are applied to Montana from mills on the Great Northern and the Northern Pacific Railway, 160 miles west of Spokane.

We find that the rates assailed, except the rate from Springston to Antelope, are not shown to have been or to be unreasonable. The maintenance of lower rates on mixed carloads of lumber and doors than on straight carloads of lumber was unjustly discriminatory against complainants, but this discrimination has now been removed.

There is no proof of damage to complainant on account of the former discrimination. We find that the rate charged on the shipment from Springston to Antelope was and is unreasonable to the extent that it exceeded and exceeds by more than 2 cents per 100 pounds the rate contemporaneously maintained from Spokane to Antelope, which relationship will be required to be maintained for the future. We further find that complainants Frank C. Hogan and Bert R. West, copartners, made the above-described shipment from Springston to Antelope and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable; and that they are entitled to reparation with interest. The exact amount of reparation due can not be determined on this record, and those complainants should prepare a statement showing the details of the shipment in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

An order will be entered in accordance with our findings herein.

43 I. C. C.

No. 8306.
NATIONAL SILICA COMPANY
v.
TOLEDO, ANGOLA & WESTERN RAILWAY COMPANY
ET AL.

Submitted January 17, 1916. Decided January 22, 1917.

Rates on glass sand in carloads from Oregon, Ill., to Silica, Ohio, and thence to Zanesville, Ohio, not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

B. Robeson for complainant.

John M. Sternhagen for New York Central Railroad Company, Toledo & Ohio Central Railway Company, and Zanesville & Western Railway Company.

T. B. Fogg for Toledo, Angola & Western Railway Company.

REPORT OF THE COMMISSION.

By THE COMMISSION:

Complainant is a corporation engaged in the manufacture of glass sand, with headquarters at Oregon, Ill. By complaint, filed September 2, 1915, it alleges that the rates charged by defendants on glass sand in carloads from Oregon to Silica, Ohio, and thence to Zanesville, Ohio, aggregating \$2.87 per short ton, are unreasonable and discriminatory in so far as they exceed in the aggregate the existing joint rate of \$2.20 per short ton from Oregon to Zanesville plus a reasonable charge for stoppage en route at Vulcan, near Toledo, Ohio, plus a reasonable charge for the haul from Vulcan to Silica and return.

Complainant ships glass sand from Oregon to Silica, where it maintains a grinding plant. There the sand is ground and shipped thence to Zanesville. Complainant seeks a transit arrangement whereunder it can ship from Oregon to Zanesville, the shipments to be diverted at Vulcan to Silica, 7.5 miles distant, and forwarded after grinding back through Vulcan to Zanesville on the basis of the joint rate from Oregon to Zanesville, plus reasonable charges for the transit service. Complainant testifies that otherwise it can not continue to maintain and utilize its Silica plant and states that a total rate not in excess of \$2.35 per short ton should be established.

Silica is not included in the through route, and the defendant carrier operating between Vulcan and Silica is not party to the joint

rate from Oregon to Zanesville. Both through traffic and that to and from Silica move by way of Toledo. Defendant New York Central Railroad has two lines into Toledo, the old line through Vulcan and the new and more direct double-tracked "air line." The joint rate from Oregon to Zanesville applies over both routes. In the interest of transportation economy and efficiency the traffic here in question is hauled into Toledo over the air line and thence switched to Vulcan, about a mile and a half distant, over the old line. The arrangement desired by complainant would require more handling and detention of cars than the present through movement, whichever route were used, for which the 15 cents per ton proposed by complainant to be added to the joint rate plainly would not afford adequate compensation.

No transit arrangement as to sand or other article entering into competition with complainant's product is shown to be accorded by defendants at any point. The rates here applied to the movement to and from Silica are not shown to be unreasonable for the service rendered or in any wise to discriminate against or unduly prejudice complainant.

The complaint will be dismissed.

43 I. C. C.

No. 8860.
DIAMOND LUMBER COMPANY
v.
**CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.**

Submitted May 25, 1916. Decided January 23, 1917.

Complainant seeks reparation because it was required to pay what is alleged to have been an unreasonable and unjustly discriminatory rate on carloads of logs from Spur 294 and Peck's Spur, Mich., to Green Bay, Wis.; *Held*, That the rates charged are not shown to have been unreasonable; that they were unduly prejudicial to complainant, but that there is no proof of resulting damage. Complaint dismissed.

F. M. Elkinton for complainant.

O. W. Dynes and *J. N. Davis* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of lumber at Green Bay, Wis. By complaint, filed October 1, 1915, it alleges that the rates charged by defendant on numerous carloads of logs shipped from Spur 294 and Peck's Spur, Mich., to Green Bay between June 21 and September 28, 1914, inclusive, were unreasonable, unjustly discriminatory, and in violation of the fourth section of the act. Reparation is asked.

Spur 294 and Peck's Spur are in the western portion of the northern peninsula of Michigan. They are 183 miles and 182 miles, respectively, from Green Bay, and by way of defendant's line are intermediate to Green Bay from Pori, Britton's Spur, and Hubbell's Mill, Mich. Seventy carloads of logs were shipped from Spur 294 and 88 carloads from Peck's Spur, aggregating 700,120 feet. Charges were collected in the sum of \$3,158.50, at a rate of 3.1 cents per 100 pounds, in accordance with defendant's distance scale. Spur 294 and Peck's Spur were not named in the published list of stations from and to which the distance scale of rates was applicable. It would thus appear that the rate of 3.1 cents had not been lawfully established from those points. It is not disputed that 3.1 cents is the proper rate under the distance scale for the distances involved. When the shipments moved there were in effect to Green Bay from the more distant points named rates on saw logs for manufacture, the products to be reshipped by way of defendant's line, of \$3 per 1,000

feet, minimum carload 4,000 feet, and minimum trainload 20 cars. At this rate charges on the shipments would have been \$2,100.36, and complainant seeks reparation accordingly.

In accordance with rule 77 of Tariff Circular 18-A, the tariff publishing the rate of \$3 per 1,000 feet provided that, upon reasonable request therefor, this rate or a rate no higher would be established from intermediate points on one day's notice. It was established from and to these points on October 1, 1914, and has since been maintained. But the minimum trainload provision has been eliminated. Complainant testified that it requested the establishment of the rate by letter several months prior to the movement of the shipments. Defendant stated that it did not receive the request. This is immaterial, however, as it appears that complainant did not ship more than 6 carloads of the logs on any one day, and therefore the rate of \$3 per 1,000 feet in connection with the minimum trainload of 20 cars would have been inapplicable. Moreover, there is no showing that the products of these logs were reshipped from Green Bay by way of defendant's line.

Complainant's only interest in the case is with respect to reparation. There is no evidence in support of the allegation of unreasonableness except a reference to the lower rates from the more distant points. The departure from the provisions of the fourth section alleged could only have existed where the movement from the intermediate points was in trainloads of 20 cars or more, a type of tariff provision which the Commission has never approved.

We find that the rates assailed are not shown to have been unreasonable, but that they were unduly prejudicial against complainant in favor of shippers located at the more distant points from which the rate of \$3 per 1,000 feet applied. This discrimination has been removed, and there is no proof of damage to complainant on account of the former discrimination upon which to base an award of reparation. The Commission considered an almost identical situation in *Wells Lumber Co. v. C., M. & St. P. Ry. Co.*, 38 I. C. C., 464.

An order will be entered dismissing the complaint.

43 I. C. C.

No. 8754.
A. ROSENBLUM

v.

**NEW YORK, PHILADELPHIA & NORFOLK RAILROAD
COMPANY ET AL.**

Submitted July 22, 1916. Decided January 23, 1917.

Rate charged on potatoes in carloads to Bushwick station, Brooklyn, N. Y., from Parksley, Melfa, and other points in Virginia, on the New York, Philadelphia & Norfolk Railroad, not shown to have been unreasonable or unjustly discriminatory. Complaint dismissed.

R. A. Koonts for complainant.

Edmund Funck for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the wholesale produce business, with his principal place of business at Brooklyn, N. Y. By complaint, filed March 25, 1916, he alleges that the rate of 21 cents per 100 pounds charged by defendants on certain carloads of potatoes shipped to Bushwick station, Brooklyn, from Parksley, Melfa, and other points in Virginia on the New York, Philadelphia & Norfolk Railroad, in June and July, 1915, were unreasonable and unjustly discriminatory in violation of sections 1 and 2 of the act. Reparation is asked.

Bushwick station is located on the Long Island Railroad. The shipments apparently moved: New York, Philadelphia & Norfolk Railroad to Delmar, Del.; Philadelphia, Baltimore & Washington Railroad to Philadelphia, Pa.; Pennsylvania Railroad and Long Island Railroad beyond. Charges were collected at the fifth-class rate of 21 cents per 100 pounds, minimum 30,000 pounds, which rate was legally applicable. A rate of 31.5 cents per barrel, estimated weight of 175 pounds, is asked. When the shipments moved a rate of 31.5 cents per barrel of 175 pounds, minimum carload weight 30,000 pounds, applied on potatoes from the points in question to practically all stations on the Pennsylvania Railroad in Brooklyn, to Thirty-seventh street station, New York City, and to Harlem River, N. Y., on the New York, New Haven & Hartford. Effective January 7, 1916, after the shipments moved, this rate was made applicable to Bushwick station and to all other points in Brooklyn

on the Long Island Railroad. At the hearing the Pennsylvania Railroad expressed willingness to make reparation on the basis of the subsequently established rate. On December 1, 1916, the 31.5-cent rate was increased to 34.2 cents, and this rate is still in effect. The existence of a lower rate to a near-by point and the subsequent establishment of that rate to the point in issue do not, of themselves, warrant a condemnation of the rate charged.

We find that the rate charged is not shown to have been unreasonable or unjustly discriminatory, and an order will be entered dismissing the complaint.

No. 8647.

CHICAGO BRIDGE & IRON WORKS

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted July 6, 1916. Decided January 23, 1917.

Charges collected on a carload of fabricated steel from Pittsburgh, Pa., to Bridgeburg, Ontario, found to have been illegal and unreasonable. Reparation awarded.

Stephen A. Poyer for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in fabricating structural steel, with its principal office at Chicago, Ill., and a plant at Bridgeburg, Ontario. By complaint, filed February 11, 1916, it alleges that the rate of 13½ cents per 100 pounds charged by defendants on a carload of steel beams and plates shipped from Pittsburgh, Pa., to Bridgeburg on July 28, 1913, was unreasonable to the extent that it exceeded 12 cents. Reparation is asked. The claim was presented to the Commission informally April 19, 1915. Rates are stated in cents per 100 pounds.

The shipment moved as routed by the shipper by way of the Pittsburgh & Lake Erie and New York Central railroads and the Grand Trunk Railway, hereinafter called the Grand Trunk. Charges were collected in the sum of \$78.25, based on the 13½-cent rate and a

weight of 54,260 pounds. The actual weight of the shipment was 53,490 pounds, so that it was overcharged \$1.04. The freight charges were paid and borne by complainant.

When the shipment moved a rate of 12 cents applied on steel beams and plates in carloads from Pittsburgh to Shipyard, Ontario, the latter point being 3.6 miles west of Bridgeburg. Shipyard is not served by the Grand Trunk but is a local station on the Michigan Central Railroad to which Bridgeburg is directly intermediate from Pittsburgh. The Grand Trunk was a participating carrier in the 12-cent rate to Shipyard at the time this shipment moved, and on February 10, 1914, the rate to Bridgeburg was reduced to 12 cents. On the instant shipment the 13½-cent rate yielded 27.77 cents per car-mile for a distance of 260 miles, and the 12-cent rate would have yielded 24.68 cents. At the former rate the per ton-mile revenue amounts to 10.37 mills and at the latter rate 9.23 mills.

We find that the rate assailed was unreasonable to the extent that it exceeded 12 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it was damaged to the extent that the charges paid exceeded those which would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$8.03, with interest, together with the overcharge of \$1.04, with interest. The 12-cent rate has been in effect for more than two years, and no order for the future is necessary.

An order awarding reparation will be entered.

43 I. C. C.

No. 8797.
R. R. SAVAGE
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted July 20, 1916. Decided January 23, 1917.

Rate on threshing machine from Grand Island, Nebr., to Webber, Kana., not shown to have been unreasonable. Complaint dismissed.

No appearance for complainant.

H. L. Lewis for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in agricultural implements at Webber, Kans. By complaint, filed March 11, 1916, he alleges that the rate of 31 cents per 100 pounds charged by defendants on a threshing machine shipped from Grand Island, Nebr., to Webber, in July, 1915, was unreasonable to the extent that it exceeded 21 cents per 100 pounds. Reparation is asked.

The shipment moved over defendants' lines and charges were collected thereon at a combination rate of 31 cents per 100 pounds: 24 cents from Grand Island to Superior, Nebr., and 7 cents from Superior to Webber. Complainant was not represented at the hearing. His case is based solely on the allegation that there was contemporaneously in effect an intrastate rate of 14 cents per 100 pounds on threshing machines from Grand Island to Superior, which, added to the 7-cent rate from Superior to Webber, made a through rate of 21 cents. The 14-cent rate referred to, if published, was not on file with the Commission and did not apply on interstate traffic.

We find that the rate assailed is not shown to have been unreasonable, and an order will be entered dismissing the complaint.

No. 8575.

PITTSBURGH PLATE GLASS COMPANY

v.

**ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.**

Submitted June 12, 1916. Decided January 23, 1917.

Rate on fuel oil from Okmulgee, Okla., to Crystal City, Mo., found to have been and to be unreasonable. Reasonable maximum rate prescribed for the future and reparation awarded.

J. M. Belleville for complainant.

Thomas Bond for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of plate glass, with its principal office at Pittsburgh, Pa. By complaint, filed January 4, 1916, it alleges that the rate of 24 cents per 100 pounds charged on 71 carloads of fuel oil shipped from Okmulgee, Okla., to Crystal City, Mo., between July 11, 1912, and February 20, 1913, inclusive, was unreasonable and unjustly discriminatory. Reparation is asked. The claim was presented to the Commission informally December 31, 1913. All rates are stated in cents per 100 pounds.

Crystal City is on the St. Louis & San Francisco Railroad, hereinafter called the defendant, 40 miles south of St. Louis, Mo. The shipments moved from Okmulgee to Crystal City, 494 miles, over defendant's line, and charges were collected at a specific commodity rate of 24 cents. On August 11, 1912, defendant published a distance scale of rates on oil, petroleum, crude and fuel, from points in Oklahoma to points on its line in Missouri, under which the rate for distances over 390 miles was 18 cents, and this rate would have applied from Okmulgee to Crystal City in the absence of a specific commodity rate. It is stated that the distance rates were intended to apply when lower than specific commodity rates, but that, due to an error in tariff publication, the distance rate did not apply from or to the points involved when the shipments moved. This error was corrected on February 20, 1913. Effective April 5, 1916, a re-

vision was made in the distance scale, owing, it is stated, to the increasing radius of oil development and the consequent extension of the application of the 18-cent rate to distances of approximately 700 miles. The 18-cent rate under the new scale applied only for distances up to 425 miles. For 500 miles and over 450 miles a rate of 20 cents was maintained, and this was the distance rate to Crystal City prior to December 6, 1916. On that date the distance scale was canceled and a specific commodity rate of 21.5 cents has since applied to Crystal City. On our informal docket defendant expressed willingness to make reparation on the basis of an 18-cent rate, and is willing to establish this rate for the future.

When the shipments moved a rate of 17 cents applied on fuel oil from Okmulgee and grouped points to St. Louis, East St. Louis, and points within the St. Louis-East St. Louis switching district. This switching district includes Granite City, Madison, and Venice, Ill. In *Midcontinent Oil Rates*, 36 I. C. C., 109, we prescribed a rate of 15 cents on fuel oil from Oklahoma points, including Okmulgee, to St. Louis. In that case we said, inter alia:

What we have found with respect to rates on the lower grades of oil when shipped to St. Louis and Chicago should be applied in just relationship to other points, although not specifically referred to in this proceeding.

Complainant cites the former as well as the present rate to St. Louis in support of its contention that the rate assailed was unreasonable and discriminatory. St. Louis is a large market for the consumption of oil and its products, as well as the gateway to many points east of the Mississippi River, and oil moves to that point in trainloads.

The average weight per car of the shipments was approximately 72,000 pounds. The 24-cent rate charged yielded 35 cents per car-mile, or 9.7 mills per ton-mile; a rate of 18 cents would have yielded 26.2 cents per car-mile, or 7.3 mills per ton-mile. The 15-cent rate prescribed to St. Louis from the midcontinent oil fields, a distance of 412 miles, yields 7.3 mills per ton-mile.

We find that the rate assailed was and for the future will be unreasonable to the extent that it exceeded and may exceed 18 cents per 100 pounds. No satisfactory evidence was adduced to support the allegation of unjust discrimination. We further find that complainant made the shipments as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable, and that it is entitled to reparation with interest. The exact amount of reparation can not be determined on this record. Complainant should prepare a statement

showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the St. Louis & San Francisco Railroad Company and its receivers for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

An appropriate order will be entered.



No. 8244.

WALTER A. ZELNICKER SUPPLY COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted November 23, 1915. Decided January 23, 1917.

Rate charged on two carloads of logging-car bodies from Kennett, Mo., to Mound, La., not found to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

J. D. Fidler for complainant.

Edgar Moulton for Vicksburg, Shreveport & Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of railway and other supplies with headquarters at St. Louis, Mo. By complaint, filed August 16, 1915, it alleges that the rate of 51 cents per 100 pounds charged for the transportation of two carloads of logging-car bodies shipped July 3, 1914, from Kennett, Mo., to Mound, La., was unreasonable and unjustly discriminatory to the extent that it exceeded 32 cents per 100 pounds. Reparation is asked.

The shipments aggregated 55,800 pounds and moved: St. Louis & San Francisco Railroad, hereinafter called the Frisco, to Jonesboro, Ark.; St. Louis Southwestern Railway to Shreveport, La.; Vicksburg, Shreveport & Pacific Railway thence to destination, a total distance of 614 miles. Charges were collected in the sum of \$284.58 at the joint class A rate of 51 cents per 100 pounds, governed by western classification. Complainant specifically routed the ship-

ments: Frisco to Memphis, Tenn.; Yazoo & Mississippi Valley Railroad to Vicksburg, Miss.; and Vicksburg, Shreveport & Pacific Railway thence to destination. However, upon the suggestion of the Frisco complainant consented to the route of movement. Complainant states that the 51-cent rate charged also applied over the route specified in the bill of lading; that a commodity rate of 32 cents contemporaneously applied on logging-car bodies from Kennett to Tallulah, La., and other points west of Mound, on the Vicksburg, Shreveport & Pacific Railway over the route of movement and also by way of Memphis, and that this rate has since been established to Mound. Tallulah is 11 miles west of Mound, and shipments from Kennett to Tallulah over the route specified in the bill of lading move through Mound. No misrouting is alleged, but on this evidence complainant essays to establish the unreasonableness of the 51-cent rate by adverting to a situation alleged to be a departure from the long-and-short-haul rule of the fourth section. An examination of the tariffs on file with the Commission fails to disclose any authority, either at the time the shipments moved or now, for routing through Memphis. It does disclose that a class A rate of 51 cents applicable to logging-car bodies was effective from Kennett to Tallulah as well as to Mound, and that the 32-cent rate published to Tallulah at the time of the shipments and subsequently made applicable to Mound, April 1, 1915, applied only on logging cars and logging-car trucks and not on logging-car bodies. Defendants explain that this rate was made with a fixed relationship rate to Shreveport. The rates to the latter point are made not to exceed the rates to Texarkana, Tex.-Ark., pursuant to our decision in *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 28 I. C. C., 569. Defendants show that the movement of logging-car bodies is only occasional; that they usually move on class rates; and that the shipments involved were the only ones complainant had ever made to Mound.

Effective April 1, 1915, the class A rate applicable to logging-car bodies from Kennett to both Tallulah and Mound was reduced to 47 cents.

We find that the rate assailed is not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial, and an order will be entered dismissing the complaint.

43 L. C. C.

No. 8736.

VALLEY CITY MILLING COMPANY

v.

GRAND RAPIDS & INDIANA RAILWAY COMPANY.

Submitted July 20, 1916. Decided January 23, 1917.

Charges on wheat in carloads from certain points in Indiana and Michigan to Grand Rapids, Mich., for milling and reshipment to destinations south of the Ohio River found to have been unreasonable. Reparation awarded.

***Ernest L. Ewing and George B. Kingston* for complainant.**

***W. J. Kelly* for defendant.**

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grain business at Grand Rapids, Mich. By complaint, filed March 18, 1916, it alleges that the rates charged by defendant from specified points in Indiana and Michigan to Grand Rapids on 48 carloads of wheat milled at Grand Rapids and the product forwarded to certain destinations south of the Ohio River were unreasonable and unjustly discriminatory. Reparation is asked. The allegation of unjust discrimination was abandoned at the hearing. The claim was presented to the Commission informally March 1, 1913.

The shipments originated at Indianfield, Kalamazoo, Mendon, Moline, and Vicksburg, Mich., and Berne, Hoagland, Howe, Huntertown, La Grange, and La Otto, Ind., local stations on defendant's line, 16 miles to 175 miles from Grand Rapids. They arrived at Grand Rapids between September 5, 1911, and March 11, 1912, inclusive. Charges were collected to Grand Rapids at local rates of 4 cents per 100 pounds from Moline, 5 cents from Kalamazoo, and 6 cents from the other points of origin. The wheat was milled into flour at Grand Rapids and the flour was shipped on local rates to Atlanta, Ga.; Bessemer, Birmingham, Ensley, Montgomery, and Woodward, Ala.; Columbus and Meridian, Miss.; Petersburg, Va.; and Memphis, Tenn.

For a long time prior to September 1, 1911, defendant's tariffs provided for the milling of wheat in transit at Grand Rapids when the product was consigned to western termini of trunk lines, points east thereof, or to points south of the Ohio River. When the milling in transit rendered necessary a back haul on the outbound product

over the same line, the charge on the grain would be reduced to a basis specified in the tariffs, and the charge on the product would be the legally applicable local, reshipping, or proportional rate to the final destination. In a tariff effective September 1, 1911, and in effect when the shipments moved the destinations south of the Ohio River to which the product could be shipped under the transit arrangement were restricted to points shown in agent Tucker's tariff I. C. C. No. 221. The destinations here in question, with the exception of Memphis, were not named in the tariff specified. The restriction as to destinations south of the Ohio River was removed March 12, 1912. When the shipments moved, the basis provided for reducing the rates on transit grain into the milling point was a distance scale ranging from $1\frac{1}{2}$ cents per 100 pounds for 25 miles and under to $5\frac{1}{2}$ cents for 250 miles and over 175 miles. On this basis the rates to Grand Rapids would have been $1\frac{1}{2}$ cents from Moline; $2\frac{1}{2}$ cents from Kalamazoo; 3 cents from Mendon, Indianfield, and Vicksburg; $3\frac{1}{2}$ cents from Howe and La Grange; $4\frac{1}{2}$ cents from La Otto; and 5 cents from Berne, Hoagland, and Huntertown. Complainant contends that the rates assailed were unreasonable to the extent that they exceeded the rates that would have applied in the absence of the tariff provision restricting the destinations south of the Ohio River to which under the transit arrangement the outbound product could be shipped.

The movement of the grain into Grand Rapids and the outbound movement of the product involved a back haul over the same line, and all rules and regulations governing milling in transit at Grand Rapids, in effect at that time, were observed. There appears to be no substantial difference in the conditions surrounding transportation to the destinations to which complainant's product was shipped and transportation to the destinations named in agent Tucker's tariff I. C. C. No. 221. As the rates assailed represented increases since January 1, 1910, defendant was bound to justify them. This it did not attempt but, on the other hand, admitted that the rates charged were unreasonable. Its witness stated that the increased rates resulted from an error made in restricting the destinations to which the product could be shipped, and that this error was corrected as soon as it was discovered.

Following *Maley & Wertz v. L. & N. R. R. Co.*, 36 I. C. C., 253, and upon the facts disclosed, we find that the rates to Grand Rapids were unreasonable to the extent that they exceeded the rates contemporaneously applicable on like shipments the product of which was consigned to destinations south of the Ohio River shown in agent Tucker's tariff I. C. C. No. 221. As Memphis was one of the destinations named in that tariff there are straight overcharges on the ship-

ments of wheat the product of which was forwarded from Grand Rapids to Memphis. We further find that complainant made the shipments as described and paid and bore charges thereon at the rates herein found to have been unreasonable or illegal; that it has been damaged to the extent of the difference between the charges collected and the charges that would have accrued at the rates herein found to have been reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice. This statement should include the shipments on which there are outstanding overcharges and should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation. As the rates found to have been reasonable, with the exception of an increase of 5 per cent following *The Five Per Cent Case*, 31 L. C. C., 351, and 32 I. C. C., 325, have been in effect for more than two years, no order for the future is necessary.

43 I. C. C.

No. 8799.
CHAS. A. SWEET PROVISION COMPANY
v.
**ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.**

Submitted July 12, 1916. Decided January 23, 1917.

Rates on bacon in less than carloads from St. Louis, Mo., to Oakdale and Ward, La., not shown to be unreasonable or otherwise unlawful. Complaint dismissed.

P. C. Ziemer and *E. A. Klebba* for complainant.

H. G. Herbel for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in cured meats at St. Louis, Mo. By complaint, filed April 6, 1916, as amended, it alleges that defendants' joint rates of 96 cents per 100 pounds on bacon, less than carloads, from St. Louis to Oakdale and Ward, La., are unreasonable, unjustly discriminatory, and in violation of the fourth section in that they exceed the aggregate of the intermediate rates to and from New Orleans, La. The establishment of reasonable rates for the future is asked.

The rates assailed are defendants' fourth-class rates, which apply to bacon in less than carloads from St. Louis to Oakdale and Ward. Complainant's case is based solely on the statement that a less-than-carload commodity rate of 38 cents per 100 pounds applies from St. Louis to New Orleans, and that fourth-class interstate rates of 35 cents apply from New Orleans to Oakdale and Ward, making combinations of 73 cents. The 38-cent St. Louis-New Orleans rate was published as early as March 2, 1909, and has since been maintained. The 35-cent class rate from New Orleans to Ward was established December 28, 1906, and to Oakdale prior to that date. Prior to August 1, 1914, these class rates applied on both state and interstate shipments of bacon; since that date they have applied only on intrastate shipments.

The rates assailed do not now exceed any combinations of interstate rates based on New Orleans, and as there is no other evidence tending to show that the rates in issue are unreasonable or otherwise unlawful, an order will be entered dismissing the complaint.

No. 8554.

GLOBE STOVE & RANGE COMPANY

v.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS
RAILWAY COMPANY ET AL.

Submitted April 25, 1916. Decided January 23, 1917.

Rate on heating stoves from Kokomo, Ind., to Ottumwa, Iowa, found to have been unreasonable. Reparation awarded.

O. R. Livinghouse for complainant.

B. J. Bermingham for Chicago, Rock Island & Pacific Railway Company and its receiver.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of stoves, ranges, furnaces, and electric ranges at Kokomo, Ind. By complaint, filed December 27, 1915, it alleges that the rate charged by defendants on a carload of heating stoves, weighing 23,800 pounds, shipped from Kokomo to Ottumwa, Iowa, September 30, 1914, was unreasonable. Reparation is asked. Rates herein are stated in cents per 100 pounds.

The shipment moved over defendants' lines. At the time a proportional commodity rate of 11 cents, minimum 24,000 pounds, was published on stoves from Mississippi River crossings to Ottumwa, applicable on shipments originating at Kokomo. Contemporaneously the proportional fifth-class rate, applicable under the western classification to stoves, in carloads, was 8.6 cents, minimum 20,000 pounds. Charges were collected on the shipment in the sum of \$60 on basis of the class rate of 14 cents, minimum 24,000 pounds, to the Mississippi River, and the commodity rate of 11 cents beyond. The commodity rate from the Mississippi River crossings to Ottumwa was canceled after the shipment moved, leaving the fifth-class rate applicable. Complainant alleges that the combination rate of 25 cents charged was unreasonable to the extent that the component west of the river exceeded 8.6 cents.

This class rate of 8.6 cents was established April 1, 1914, following the decision of the Commission in the *Interior Iowa Cities Case*, 29 L. C. C., 536, which related to class rates from Mississippi River cross-

ings to interior Iowa points, applicable on traffic from points east of the Indiana-Illinois state line. In that case we approved as reasonable a schedule of proportional class rates submitted by the interested carriers, which included the rate of 8.6 cents. Dealing with the commodity rates, we said:

It is our understanding, however, that the Iowa interests consider that the present proportional rates west of the river on commodities originating east of the Indiana-Illinois state line should remain in effect except where the class proportionals herein established make lower, in which event the class rates should govern. This we approve, and if we are not correct in our understanding the matter may be again called to our attention.

The only explanation in justification of the higher commodity rate is that it covered a special and broader mixture than that provided under the classification. This is not sufficient, as it is apparent from examination of the tariffs that no material advantage accrues in this respect.

We find that the rate assailed was unreasonable to the extent that it exceeded the aggregate of the class rates contemporaneously in effect over the route of movement, viz, 14 cents per 100 pounds, minimum 24,000 pounds, to the Mississippi River, and 8.6 cents, minimum 20,000 pounds, beyond; that complainant made the shipment as described, and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$5.93, with interest.

An order will be entered accordingly.

43 I. C. C.

No. 8596.

BEST-CLYMER MANUFACTURING COMPANY

v.

WABASH RAILWAY COMPANY ET AL.

Submitted April 26, 1916. Decided January 23, 1917.

Rate of 46 cents per 100 pounds on machinery in carloads from St. Louis, Mo., to South Fort Smith, Ark., not shown to have been or to be unreasonable or unduly prejudicial. Complaint dismissed.

C. H. Rodehaver for complainant.

Fred G. Wright for St. Louis, Iron Mountain & Southern Railway Company and its receiver, and Arkansas Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of sirups and preserves, with its principal office at St. Louis, Mo. By complaint, filed January 17, 1916, it alleges that the charges collected by defendants on machinery, in carloads, shipped from St. Louis to South Fort Smith, Ark., in May and July, 1914, were unreasonable and unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future. Rates herein are stated in cents per 100 pounds.

The shipments consisted of machinery for use in the construction of a sorghum mill. They moved: Wabash Railway from the plant of the Fulton Iron Works at St. Louis to the connection with the St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, approximately 3 miles; Iron Mountain to Fort Smith, Ark., 506 miles; Arkansas Central Railroad thence to destination, 5 miles. Charges were collected at the class A rate of 46 cents, minimum 24,000 pounds, applicable under the western classification to machinery n. o. s., in carloads. The charge for the switching service of the Wabash Railway, 1 cent, minimum \$5 per car, was absorbed by the Iron Mountain. A division of the through rate accrued to the Arkansas Central Railroad. South Fort Smith is on the Fort Smith rate basis. Complainant seeks to have applied to machinery from St. Louis to South Fort Smith a rate of 42 cents, minimum 30,000 pounds, the equivalent of the commodity rate on "engines and boilers," in straight or mixed carloads, which applied from and to the same points when the shipments moved.

The gravamen of the complaint is the relationship of the rate on engines and boilers to the class A rate, complainant contending that engines are, as a rule, worth more than other machinery.

One of the shipments contained the parts of a flywheel. Complainant attempted to show that the rate on "engines and boilers" was legally applicable to certain articles included in the shipments. There is nothing, however, to establish the exact contents of these cars. Complainant shows that from St. Louis to certain points in Arkansas commodity rates are maintained on machinery; that the commodity rate from St. Louis to South Fort Smith on engines and boilers is 91.3 per cent of the class A rate, and that the commodity rates on machinery to other points named range from 45.5 per cent to 88.9 per cent of the class A rate. The probative value of this is not apparent beyond establishing the fact that as to machinery a departure has been made from the class basis in instances other than that on engines and boilers to South Fort Smith. With the exception of two points located on the Iron Mountain, the destinations cited to which commodity rates apply are in northwestern Arkansas, on the Missouri & North Arkansas Railroad. While the Iron Mountain participates in these rates, it is asserted that the lower adjustment in northwestern Arkansas had its inception at points that were for many years on the western trunk line basis. The 42-cent commodity rate on engines and boilers from St. Louis to South Fort Smith was canceled May 26, 1916. Few, if any, shipments moved thereunder. The 46-cent rate charged yielded 17.8 mills per ton-mile; by way of the St. Louis & San Francisco Railroad, the short line, 417 miles, this rate yields 22 mills per ton-mile.

We find that the rate assailed is not shown to have been or to be unreasonable or unduly prejudicial, and an order will be entered dismissing the complaint.

No. 8465.
HEALY & TOWLE
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted May 20, 1916. Decided January 22, 1917.

1. The Chicago & North Western Railway Company filed and posted a tariff naming a through rate of \$82.50 per car on horses, in carloads, from South Omaha, Nebr., a point on the Chicago & North Western Railway, to Wausau, Wis., in connection with the Chicago, St. Paul, Minneapolis & Omaha Railway Company. The concurrence of the latter carrier was limited to traffic originating or terminating on its line, and therefore a combination rate based on Sioux City, Iowa, which was higher than the \$82.50 rate, was charged on certain carloads of horses from South Omaha to Wausau; *Held*, That the rate of \$82.50 was displayed to the public as unrestricted in the tariff of the Chicago & North Western Railway, and reparation awarded.
2. Rates charged on two carloads of horses from Sioux City to Wausau not shown to have been unreasonable.

A. E. Solie for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Dan Healy and Melvin P. Towle, copartners, engaged in buying and selling horses, with their principal place of business at Wausau, Wis. By complaint, filed November 18, 1915, as amended, they allege that the rates charged by defendants on eight carloads of horses, six from South Omaha, Nebr., and two from Sioux City, Iowa, to Wausau, between April 1 and July 18, 1912, inclusive, were unreasonable to the extent that they exceeded \$82.50 per car. The claim was presented to the Commission informally March 28, 1914.

The shipments from South Omaha moved: Chicago & North Western Railway, hereinafter called the North Western, to Sioux City; Chicago, St. Paul, Minneapolis & Omaha Railway, hereinafter called the Omaha, to Marshfield, Wis.; North Western to destination. Freight charges were collected thereon in the sum of \$726.01, based on the local commodity rate of 12.7 cents per 100 pounds to Sioux City and the joint commodity rate of \$91.50 per car beyond. The shipments from Sioux City moved by way

of the Omaha to Marshfield and the North Western beyond. Charges were collected thereon in the sum of \$183, at a rate of \$91.50 per car. The distance from South Omaha to Wausau, by way of Sioux City and Marshfield, the direct route, is 594 miles. Complainants desired that the shipments from South Omaha move over this route. Defendants' agent declined to issue through billing, claiming that if billed through the shipments would have to move over the North Western by way of De Kalb, Ill. The distance over this route is 713 miles. The shipments were billed to Sioux City and there consigned by way of Marshfield to Wausau.

Complainants contend that the tariff of the North Western contained no restriction prohibiting routing according as the shipments moved, and that a through rate of \$82.50 per car should have been applied. Upon examination of the tariffs it appears that the North Western published a tariff, in which the Omaha is shown as a participating carrier, containing a rate of \$82.50 per car from South Omaha to Manitowoc, Wis., which applied by intermediate application to Wausau. No provision is found in this tariff restricting the application of the rate by way of the North Western only. The concurrence of the Omaha is, however, limited to traffic between points on the Omaha and points on or via the North Western. Inasmuch as the traffic originated on the North Western at South Omaha, the rate of \$82.50 per car did not apply in connection with the Omaha, and the rates charged were legally applicable. The rate charged on the shipments from Sioux City was legally applicable. From the evidence adduced it can not be said that the rates assailed were inherently unreasonable.

Concurrence sheets are not posted in the same manner as are tariffs, and no opportunity is afforded the general public to ascertain whether or not the terms of the concurrence limit the application of the tariff in so far as the participating road is concerned. The tariff of the North Western offered to the public a rate of \$82.50 per car on horses from South Omaha to Wausau over the route of movement, and as to the shipments from that point the \$82.50 rate must be protected. The tariff or the concurrence must be immediately corrected.

We find that complainants made the shipments from South Omaha as described and paid and bore freight charges thereon in the sum of \$726.01; that they were damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate of \$82.50 per car; and that they are entitled to reparation from the Chicago & North Western Railway Company in the sum of \$231.01, with interest.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 845.
MOLASSES FROM TEXAS AND LOUISIANA (No. 2).

Submitted November 13, 1916. Decided February 5, 1917.

1. Proposed increased carload rate on domestic molasses from New Orleans, La., and points taking the same rates to Texarkana, Ark.-Tex., and points taking the same rates, justified.
2. Proposed increased carload rate on molasses from Monroe, La., to Texarkana, Ark.-Tex., justified.
3. Proposed increased carload rate on domestic molasses from points on the line of the Texas & Pacific Railway, Westwego Elevators to New Orleans, La., inclusive, to points on the line of the same respondent, Boyd, Ark., to Kiblah, Ark., inclusive, not justified.
4. Proposed change in tariff rule whereby the amount of molasses included with sugar or honey in a mixed carload shipment may not exceed one-third of the total weight of the shipment, not justified.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company, Louisiana Western Railroad Company, and other carriers.

Frank Koch for Texas & Pacific Railway Company; Louisiana Railway & Navigation Company; and St. Louis, Iron Mountain & Southern Railway Company and its receivers.

N. C. Barnett for Gulf coast lines.

Theodore Brent and *John A. Smith* for New Orleans Joint Traffic Bureau.

W. W. Ingalls, jr., for Penick & Ford, Limited.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The proposed changes in rates and regulations under investigation in this proceeding are as follows:

1. An increase of 2 cents per 100 pounds in the carload rate on molasses from New Orleans, and points taking the same rates, to Texarkana, Ark.-Tex., and points taking the same rates, from Monroe, La., to Texarkana; and from points on the line of the Texas & Pacific Railway, Westwego Elevators to New Orleans, La., inclusive, to local points in Arkansas, Boyd to Kiblah, inclusive, on the same road, intermediate to Texarkana.

2. A change in the rule relating to the shipment of mixed carloads of sugar, molasses, and honey, whereby the amount of molasses in such a mixture may not exceed one-third of the entire weight.

The tariffs proposing these changes were filed to become effective May 20, 1916. Protests were filed by various shippers at New Orleans and receivers at Texarkana, and by orders dated May 18 and August 25, 1916, the operation of the tariffs was suspended until March 17, 1917.

Practically the entire controversy concerns the traffic from New Orleans to Texarkana, to which attention will for the present be confined. The present rate on sugar and molasses in straight or mixed carloads from New Orleans and group to Texarkana and group is 25 cents per 100 pounds. The Texarkana group includes about 70 points in southwestern Arkansas and a few adjacent points in Texas, on the line of the Texas & Pacific.

Similar increases in the carload rates on molasses from New Orleans and group to a large territory, including certain points in Arkansas, were investigated by us, and in *Molasses from Texas and Louisiana*, 40 I. C. C., 435, were approved as to destinations on and east of the Missouri River and the line of the Kansas City Southern Railway, but with a few exceptions were disapproved as to destinations farther west. The primary purpose of the increases in that proceeding, as stated by the carriers, was the preservation of rate relationships long established, but the rates therein approved were also shown to be comparatively reasonable. The circumstances which justified increased rates in that case are again relied upon here to a large extent. Respondents claim that the sugar and molasses traffic under present rates is not bearing its proper proportion of the burden of transportation; that the traffic in sugar from New Orleans to Texarkana is subject to such competition from other shipping points that it is impracticable to increase the rate on that commodity; and that the molasses traffic, being less competitive, it is possible to place upon a higher basis.

That the proposed rate on molasses to Texarkana group points is not unreasonable when compared with existing rates on molasses from New Orleans to other destinations, is indicated by the following comparisons:

From New Orleans to—	Distance.	Rate on molasses.	Per ton-mile earnings.	Rate on sugar and molasses in mixed carloads.
	Miles.	Cents.	Mills.	Cents.
Texarkana.....	1 379	27.0	14.2	25.0
Do.....	1 380	27.0	13.9	25.0
Camden, Ark.....	302	30.0	15.8	30.0
De Queen, Ark.....	425	37.0	17.0	37.0
Marshall, Tex.....	349	36.0	20.1	44.0
Jefferson, Tex.....	364	44.0	24.2	44.0

¹ Short-line distance (two lines).

² Shortest single-line distance.

43 I. C. C.

A comparison with rates on other commodities in straight carloads between the same points is also favorable to the proposed rate on molasses:

From New Orleans, La., to Texarkana.	Rate.	Per ton-mile earnings.	From New Orleans, La., to Texarkana.	Rate.	Per ton-mile earnings.
	Cents.	Mills.		Cents.	Mills.
Molasses.....	27.0	14.2	Packing-house products.....	30.0	20.6
Canned goods.....	28.0	14.8	Coffee.....	32.0	16.9
Do.....	35.0	18.5	Paints.....	36.0	19.0
Rice.....	20.0	15.3	Iron and steel articles.....	26.0	13.7
Beer.....	33.0	17.4			

Rates apply on different mixtures.

The principal protestants, large shippers of molasses at New Orleans, point out that most of the rates used in this comparison are also applicable to mixtures of allied commodities, or that the commodities are of greater value or more perishable than molasses. Beer is handled in iced refrigerator cars, necessitating the haul of a great proportion of nonrevenue weight. The proposed rate on molasses, however, is applicable to all grades of molasses and sirups, including blackstrap molasses, in straight or mixed carloads.

In support of their claim of unreasonableness in the proposed rate protestants submitted numerous comparisons with current rates on molasses and sirups from St. Louis and Kansas City, Mo., Clinton, Iowa, and Fort Scott, Kans., to various destinations. The following items are representative:

From—	To—	Distance.	Rate.	Per ton- mile earnings.
		Miles.	Cents.	Mills.
New Orleans, La.....	Texarkana.....	379	27.0	14.2
Do.....	do.....	380	27.0	13.9
St. Louis, Mo.....	do.....	490	35.0	14.3
Do.....	do.....	526	35.0	13.3
Do.....	Springfield, Ohio.....	377	18.4	12.4
Do.....	Boone, Iowa.....	391	22.0	11.3
Kansas City, Mo.....	Chicago, Ill.....	451	23.5	10.4
Do.....	Madison, Wis.....	493	23.5	9.5
Clinton, Iowa.....	Kokomo, Ind.....	270	16.2	12.0
Do.....	Toledo, Ohio.....	382	19.9	10.4
Fort Scott, Kans.....	Cedar Rapids, Iowa.....	400	22.5	11.2
Do.....	Sioux Falls, S. Dak.....	478	21.0	8.8

* Short-time distance (two lines).
Shortest single-line distance.
Short-time distance.
* Distance via Thebes, Ill. In *Texas Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 23 I. C. C., 909, it was shown that the short-line route of 490 miles, St. Louis to Texarkana, presented unusual operating difficulties, for which reason the route via Thebes, 526 miles long, was preferred in freight rate comparisons.

Under the rate of 35 cents the St. Louis shipper is allowed the unrestricted mixture of sugar and molasses in carload shipments. It appears, however, that the principal competition encountered by New Orleans molasses in the Texarkana market is that of corn sirup from St. Louis and Chicago. The rate on corn sirup in carloads, or 43 I. C. C.

in carload mixtures with corn sugar or grape sugar, St. Louis to Texarkana, is 30 cents, yielding 11.4 mills per ton-mile for the distance of 526 miles. We have no basis for a finding of undue discrimination, and in testing the reasonableness of the proposed rate must give greater weight to comparisons with rates on the same commodity from New Orleans. As to the comparisons with rates from St. Louis and Kansas City, Mo., Clinton, Iowa, and Fort Scott, Kans., to points in central freight association territory and the territory immediately north and northwest, differences in transportation and traffic conditions greatly impair their value. The rates from Fort Scott, Kans., apply on sorghum sirup only.

As in the former proceeding, protestants also rely largely upon the lower value and greater density of molasses as compared with sugar, tending to justify lower rates, rather than higher, on the former commodity; also claiming that molasses is a by-product in the manufacture of sugar and that the proposed adjustment, naming a higher rate on the by-product, is in violation of one of the common principles of rate making. The commodity relationship between sugar and molasses was discussed in our former opinion in *Molasses from Texas and Louisiana, supra*, and the discussion need not be repeated here. It is not shown that any undue discrimination will result from the maintenance of higher rates on molasses than on sugar. In fact, it is stated that most if not all of the dealers in molasses are also dealers in sugar. We find that the proposed increased rate on molasses from New Orleans and group to Texarkana and group has been justified.

The proposed rate on molasses from Monroe, La., to Texarkana substantially preserves the present relationship with New Orleans rates and will be approved. Monroe usually takes the New Orleans rates on traffic to Texarkana, but there is an exception in the case of molasses and sugar, the present rate on those commodities being 22 cents and the proposed rate on molasses 24 cents. The traffic affected is apparently small.

No evidence was offered in justification of the proposed increase in the rate on molasses from New Orleans and near-by points on the Texas & Pacific to intermediate local points on the same line south of Texarkana. Both present and proposed rates are in violation of the fourth section, the present rate being 39 cents as against the rate of 25 cents to Texarkana. Pending a justification of the present rate, the proposed increase must be disapproved.

The privilege of shipping mixed carloads of molasses and sugar is of substantial value, especially to the smaller dealers. It appears that shippers of molasses frequently purchase sugar and supply it to their customers without profit, solely for the purpose of providing

the desired mixture in a consignment. Under current tariffs the unrestricted mixing privilege is allowed to shippers from New Orleans to Texarkana and many other points, some of which are competitive with Texarkana. So far as the record shows, the respondents do not propose to change that provision as to such competitive points. They claim that their tariffs now provide for the unrestricted mixture of sugar and molasses in carloads from New Orleans and group to Texarkana and group at a rate of 28 cents, under a description reading as follows:

Groceries: Glucose; sirups, except flavoring or fruit sirups; jellies; preserves; fruit butter; and mince meat; in straight or mixed carloads; or in mixed carloads with corn-sirup honey, in tin cans, boxed; liquid honey—comb extracted—in tin cans, boxed; molasses (see note 1); sugar, except lemon and maple sugar; minimum weight, 30,000 pounds.

NOTE 1.—Rates shown on blackstrap or low-grade molasses, in tank cars, will apply only on shipments valuation declared by shipper not to exceed 8 cents per gallon.

This item does not satisfactorily provide for the shipment of mixed carloads of sugar and molasses. It apparently is intended primarily to provide for the shipment in mixed carloads of other commodities in the first group, one or more of which must be included in the shipment. A further objection is found in the fact that the rate of 28 cents is 1 cent higher than the proposed rate on molasses, while to Arkansas points competing with Texarkana the unrestricted mixing privilege is granted under the molasses rate.

The proposed restriction in the quantity of molasses in the mixture would apparently effect undue discrimination as between localities, and must be disapproved, although the right to increase the rate on molasses would ordinarily carry with it the right to protect the increased rate by a restriction of the mixing privilege. Continuance of the present rule permitting the unrestricted mixture of sugar and molasses under the sugar rate to Texarkana and group would, with the increase in the molasses rate, unduly discriminate in favor of those points. Effective contemporaneously with such increased rate, respondents will be expected to place Texarkana and competing points upon a parity with respect to the mixing privilege.

The disapproval of the proposed change in the rule as to mixtures extends to all such items under suspension in this proceeding.

An order will be entered in accordance with these conclusions.

S. L. C. Q.

No. 7591.
SOUTHERN RICE GROWERS' ASSOCIATION ET AL.
v.
TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL.

Submitted February 25, 1916. Decided February 6, 1917.

Upon application of complainants to require the defendant carriers to reestablish milling in transit on rice from all rice-producing points in Texas, and in the state of Louisiana west of the Mississippi River, to interstate destinations on the lines of the defendants, *Held*:

1. That the defendant carriers have not justified the withdrawal of milling-in-transit arrangements on rice which were maintained by them during the period from December, 1912, to September 1, 1914, and that such arrangement should be restored.
2. That the 2-cent milling-in-transit charge on the clean rice which applied during the period when transit arrangements were in effect has not been shown to be unreasonable.

S. H. Cowan, J. A. Morgan, A. Pace, and E. A. Eignus for complainants.

D. S. Cage for Mutual Rice Trade & Development Association.

A. Pace for Lake Charles Rice Milling Company.

W. K. Morrow for Standard Milling Company.

R. Bradbury for Orange Rice Mill Company.

W. B. Dunlap for San Jacinto Rice Company.

Walter S. Davis for Seaboard Rice Milling Company.

H. S. L'Hommedieu for Orange Commercial Club.

Theodore Brent and John A. Smith for New Orleans Traffic Bureau, intervener.

J. H. Tallichet; J. R. Christian; William Burger; J. H. Hershey; Drew Head; Baker, Botts, Parker & Garwood; Denegre, Leovy & Chaffe; and F. H. Wood for defendants.

REPORT OF THE COMMISSION.

HALL, *Commissioner*:

Complainants are the Southern Rice Growers' Association, an organization of rice growers and shippers of Texas and Louisiana, various commercial organizations, and rice milling and irrigation companies interested in the production, milling, shipping, and marketing of rice. By complaint, filed December 16, 1914, it is alleged that the action of defendants in canceling, effective September 1,

1914, the milling-in-transit arrangement on rice previously in effect at Texas and Louisiana milling points, was unjust, unreasonable, and unjustly discriminatory as against the complainants and all other persons in the same territory engaged in the production, milling, and shipping of rice, and as against the consumer. It is further alleged (1) that such cancellation resulted in an unjust discrimination against complainants, as compared with shippers from New Orleans who enjoy lower rates on rice and rice products to the consuming markets of the United States; (2) that it is a discrimination to deny milling-in-transit rates on rice and at the same time to grant them on corn, wheat, oats, and the products thereof; (3) that the rates charged for the transportation of rice and rice products from all producing points in Texas, and in Louisiana west of the Mississippi River, to points in other states on the lines of the defendants, are unjust and unreasonable and are unduly discriminatory as compared with the rates from New Orleans to the same destinations; and (4) that the 2-cent charge existing under the previous milling-in-transit rule was unreasonable.

We are asked to make an order requiring defendants to establish reasonable rules and regulations providing for the milling in transit of rice and rice products at all points where rice mills may be located on the lines of the originating railroads in Texas and Louisiana; also to prescribe just and reasonable rules and regulations regarding the milling in transit of rice, and to determine and prescribe just, reasonable, and nondiscriminatory rates on rice and rice products from all points on the lines of the originating carriers in the rice belt of Texas and Louisiana west of the Mississippi River, to all interstate destinations on defendants' lines, and reasonable rates on rough rice from points in Texas to Louisiana rice mills and from points in Louisiana to Texas rice mills.

The complainants' counsel announced at the beginning of the hearing that he thought their evidence in this case should be confined to such showing as might be necessary in order to support their claim for milling in transit on rice, and assented to the proposition that other portions of their complaint might be disregarded in the disposal of this case. Complainants' evidence was addressed in the main to the establishment of milling in transit on rice.

The New Orleans Joint Traffic Bureau intervened and submitted evidence and brief in opposition to the change sought by complainants. Rates and transit charges are stated in this report in cents per 100 pounds.

The rice belt in Texas, and in Louisiana west of the Mississippi River, is stated on this record to be from 75 to 100 miles wide,
 48 L. C. C.

extending along the Gulf of Mexico from Victoria, Tex., easterly across Texas and part of Louisiana. The rice mills are all situated within or contiguous to this rice belt. It appears that rough rice is usually bought at the farm by millers who ship it to their mills, and reship the clean rice product to consuming markets. During the year 1911 the International & Great Northern Railway put in effect a milling-in-transit arrangement at Houston which, it is claimed, ultimately induced the other lines, and particularly those originating rough rice, to establish the same arrangement in order to secure the haul of clean rice from Houston and other milling points as against the competition of the International & Great Northern. This action was taken by the Sunset-Central lines on December 10, 1912, as a competitive necessity, it is asserted, and by other lines at about the same time. Under these milling-in-transit arrangements the rough rice could be hauled into the milling points, there milled, and the clean rice reshipped at the through clean rice rates from point of origin of the rough rice plus a transit charge of 2 cents per 100 pounds of clean rice. These transit arrangements and charges only applied at points in direct line of transit from point of origin to final destination, or when out of route movement or back haul did not exceed 125 miles. An indirect service, back-haul, or out of route movement was defined as the difference between the distance actually traversed by the shipment and the distance which would have been traversed if the shipment had moved in direct line from point of origin to final destination. When out of route or back-haul service was in excess of 125 miles a charge of one-half cent per ton per mile was made for such excess. Subsequently it was provided that clean rice rates should be observed as minima in moving out the by-products incident to the milling. By tariff, effective September 1, 1914, the milling-in-transit arrangement was canceled, thereby increasing the aggregate charge to the shipper and throwing upon the carriers the statutory burden of showing the increased charge to be just and reasonable.

To the alleged discrimination in denying milling in transit on rice and allowing it on wheat, corn, oats, and the products thereof, little, if any, evidence was directed. It was not shown that there is any similarity between the circumstances which have induced carriers to establish milling-in-transit rates on these grains and the circumstances which it is now claimed make necessary the establishment of such rates on rice and its products.

The complainants asserted that New Orleans is a rate-breaking point and that rates on rice from various producing points in Louisiana and Texas to certain important consuming markets are made

by combination on New Orleans. Little evidence was offered by complainants to the end of showing what actual rate advantage is possessed by New Orleans as compared with other milling points in Louisiana or Texas.

Evidence adduced by the intervener purported to show that during the period beginning August 1, 1913, and ending February 25, 1914, the average rate paid on all rough rice brought from points in Louisiana or Texas to New Orleans was 12.1 cents, while the average rate paid on rough rice brought to other representative milling points was, to Houston, Tex., 6.22 cents; Bay City, Tex., 6.09 cents; Lake Charles, La., 5.54 cents. The average rate paid on rough rice from the farm to the mills at Houston or Bay City corresponds with the rate charged in Texas on rough rice for a one-line haul of from 60 to 70 miles, or for a two-line haul of from 40 to 60 miles. The average rate shown on rough rice from the farm to the mill at Lake Charles corresponds with the rate charged in Louisiana for hauling rough rice a distance of approximately 20 miles over a one-line haul, and is somewhat less than the rate authorized in Louisiana for a two-line haul of 10 miles. The average rate shown for the transportation of rough rice from the farm to the mill at New Orleans corresponds with the rate in Texas for a one-line haul of from 180 to 190 miles, or a two-line haul of from 160 to 170 miles. The rate on rough rice to New Orleans from all territory in Texas west of Houston is 19 cents, and from Houston and points east thereof in Texas it is 15 cents. Inasmuch as Houston is approximately 362 miles west of New Orleans, the 19-cent rate probably applies for an average haul of slightly less than 400 miles, and the 15-cent rate for an average haul of from 275 to 290 miles. A witness for complainants testified that it took 45,455 pounds of rough rice to produce 30,000 pounds of clean rice. On that basis New Orleans pays on the average inbound shipment of rough rice amounting to 45,455 pounds a transportation charge of \$55; Houston pays \$28.27; Bay City, \$27.68; and Lake Charles, \$25.18.

The situation as to consuming markets in central freight association territory is illustrated by the rate on clean rice to Indianapolis. At the time this case was heard this rate was 29 cents from Houston, Bay City, and Lake Charles, a distance of approximately 1,100 miles, and 24 cents from New Orleans, a distance of approximately 900 miles. New Orleans, therefore, paid \$72 on a shipment of 30,000 pounds of clean rice to Indianapolis, making the total transportation charge on the rough rice into New Orleans and clean rice out \$127. The other milling points named pay on such a shipment on the clean rice \$87 and total charges on the rough rice in and clean rice out of

\$115.27, \$114.68, and \$112.18 when milled at Houston, Bay City, and Lake Charles, respectively.

The rate to New Orleans on rough rice from Texas points west of Houston is, as stated, 19 cents; from Houston and points east thereof, 15 cents. New Orleans, therefore, pays on a shipment of 45,455 pounds of Texas rough rice \$68.18 if from a point in Texas, Houston or east, and \$86.36 if from a point west of Houston. On a shipment to Atlanta, Ga., of the resulting 30,000 pounds of clean rice, the charge is \$75, making a total transportation charge of \$143.18 from territory east and \$161.36 from territory west of Houston. The total average transportation charge on a similar shipment milled at Houston is \$133.27. If the clean rice is shipped to Charleston, S. C., instead of Atlanta, Ga., when milled at New Orleans, the total charge is \$137.18, or \$155.36, and when milled at Houston the charge is \$142.27. New Orleans is a rate-breaking point on traffic from Texas to Charleston, S. C., but it is not clear from the record that this results in any unlawful advantage to New Orleans.

It is apparent that New Orleans mills draw rough rice from a much wider area than do the other mills in Texas or Louisiana, and this accounts in part for the higher average inbound rate paid. We know of no sound basis on which a New Orleans miller can claim the right to ship rough rice from all the Texas belt to New Orleans and forward the product on a parity of in and out rates with the miller who is situated in the rice belt and whose haul of rough rice to the mill is but 60 or 70 miles as compared with a haul of several hundred miles to New Orleans.

In the situation above described, where through rates are sought from the farm to the market, with transit arrangements at milling points, a comparison of the results obtained under the present rate system, made by adding the charges on rough rice into the milling points to the charges on the clean rice out, for the purpose of determining the relative advantages of respective milling points, appears to be reasonable and proper. Such situations are entirely unlike that described in *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31, where we said:

We have uniformly held that a carrier could not impose an unreasonably high local rate upon any community because of the advantages that it properly enjoyed for securing low inbound rates.

In *Mutual Rice Trade & Devel. Asso. Houston v. I. & G. N. R. R.*, 23 I. C. C., 219, we had occasion to deal with a claim on behalf of the rice millers of Texas that the rates on clean rice from Texas points to points in the southeast, central freight association, Illinois and Wisconsin, western trunk line, trans-Missouri, and Pacific coast

territories, were unreasonable and discriminatory as compared with the rates from New Orleans. In that case we said, at page 225:

To sum up our conclusions, we do not find the rates from Texas points to central freight association territory (east of the Illinois-Indiana state line) to Illinois or to the Pacific coast to be discriminatory as compared with the corresponding rates from New Orleans, but we do find that the through rates, of which any-quantity rates are factors, from Texas points to points in the southeast are unreasonable and discriminatory, and that joint carload rates from Texas milling points to this territory at least 5 cents less than the lowest combination of locals contemporaneously in effect to and from Mississippi River points would be just and reasonable.

The complaint was directed against all rice rates from Texas points to southeastern territory, which was defined as that territory east of the Mississippi and south of the Ohio rivers. We shall limit our order, however, to rice rates applying from Texas points to points in this territory as to which any-quantity rates from Mississippi River points are named in M. P. Washburn's tariff No. 7, L. C. C. No. 78.

Nothing has been shown in this case to indicate that the existing conditions, except in so far as those conditions have been modified as the result of the order in the case cited, are in any manner different from the conditions at the time that case was tried, nor has anything been shown to indicate that the conclusion there reached was erroneous.

Complainants, who are producers of rice and mill operators, united in urging the restoration of milling in transit on rice for the reason that in their judgment this would aid in giving to the market for rough rice a greater stability. It may be remarked that it is no function of the Commission to stabilize markets. These complainants seek a milling-in-transit arrangement which will permit them to purchase rice at any point in the rice belt, send it to any mill, and forward the mill product to any consuming market at the balance of the through rate from the producing point to the consuming point. In the event of a failure or shortage of the crop in one section of the rice belt the mills in that section could draw their supply of rice from some other section, and the producer at any point would have the advantage of the greater demand created by the greater number of mills seeking his product. As heretofore stated, the rice mills are practically all within or contiguous to the rice belt. One witness testified that the capacity of these mills is sufficient to mill three times the present production.

The carriers show that all the mills, except possibly one, were built and have developed their business under the present system of rates and contend that any such general milling-in-transit arrangements as are here proposed are unnecessary and would result in a loss to the defendants of about two-thirds of the revenue which they now derive from the transportation of rough rice from the producing points to

the mills, with no compensating equivalent. Thus in the case of the mills at Houston, Bay City, and Lake Charles, it appears that the average rate paid on the rough rice from the farm to the mill is in the neighborhood of 6 cents. The rate to Kansas City, for example, on the rough rice from the farm or the clean rice from the mill was 32 cents at the time this case was heard. The revenue derived by the carriers from a shipment of 45,455 pounds of rough rice to any of these mills was approximately \$27.27, and in the event of the shipment to Kansas City of its product, 30,000 pounds of clean rice, the revenue thereon would be \$96, or a total revenue of \$123.27. If complainants' prayer should be granted the effect would be to reduce this revenue by 6 cents per 100 pounds on 30,000 pounds of clean rice content in the rough rice moving to the mill, and on which the through rate of 32 cents from the farm would apply, or \$18 on the shipment considered. If the transit charge of 2 cents collected on the clean rice during the period when milling in transit was in effect should be applied it would add \$6 to the revenue received by the carriers, leaving the total revenue \$111.27, or \$12 less than the revenue shown.

The principal justification offered by the defendants for the cancellation of their milling-in-transit tariffs is that under those tariffs their earnings were inadequate. But is this a justification? The significant thing about a milling-in-transit arrangement is its tendency to place the miller at an intermediate point on a more nearly equal footing with the miller at the producing point. The establishment of transit by defendants was a recognition of the propriety of such a rate relationship in this case. When defendants concluded that their earnings on the rice traffic were inadequate the logical thing for them to do was to increase their rates. This they subsequently did (see *Rice from Texas and Louisiana*, 40 I. C. C., 285, and *Rice from Texas and Louisiana (No. 2)*, 43 I. C. C., 29), but only after they had caused a disruption of rate relationships by the withdrawal of milling in transit.

The claim that the 2-cent transit charge applied under the milling-in-transit rules formerly in effect was or is unreasonable has not been sustained by the complainants. The transit arrangement is a valuable service to them and a source of expense to the carriers as heretofore shown.

Upon the whole record we are of opinion and find that the carriers have failed to justify the withdrawal of milling in transit on rice moving from Texas and Louisiana producing points to interstate destinations.

We further find that the milling-in-transit charge of 2 cents on the clean rice has not been shown to be unreasonable.

The record in this proceeding concerning the various rules and regulations applied by the carriers in connection with the milling-in-transit rates formerly in effect is not sufficient to enable us to reach a conclusion respecting their reasonableness or propriety.

Nothing in this report should be construed as restraining the carriers from the application of reasonable charges for the out of line service rendered in those instances in which the rice is milled at points which are not directly intermediate between the points of shipment of rough rice and the ultimate destinations of the product.

An order will be entered in conformity with the views above expressed.

DANIELS, *Commissioner*, dissents.

INVESTIGATION AND SUSPENSION DOCKET No. 908.
GASOLINE FROM COFFEYVILLE, KANS.

Submitted January 3, 1917. Decided February 5, 1917.

Proposed increased rates on gasoline in carloads via two lines and on petroleum and petroleum products via a third line from Coffeyville, Kans., to Kansas City and Sugar Creek, Mo., and on petroleum and petroleum products via all lines from Coffeyville to Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, applicable on shipments originating at Delaware, Okla., found not justified.

C. S. Burg for Missouri, Kansas & Texas Railway Company.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

H. G. Herbel, Fred G. Wright, and C. C. P. Rausch for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

E. H. Hogueland for Henderson Gasoline Company, Diamond Gasoline Company, and Union Traction Company.

John B. Gillam for National Refining Company.

REPORT OF THE COMMISSION.

MEYER, Chairman:

Proposed increased rates on gasoline via two respondent lines, and on petroleum and petroleum products via a third respondent line, from Coffeyville, Kans., to Kansas City and Sugar Creek, Mo., and on petroleum and petroleum products via all respondent lines to Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, applicable on shipments originating at Delaware, Okla., are involved in this proceeding. The commodities named move to market in private tank cars, for the use of which respondents pay the customary mileage charge of three-fourths cent per mile in both directions. The increased rates were published to become effective in September and October, 1916, but on protests filed by various interested shippers were suspended until June 30, 1917.

Delaware is located on the rails of the Union Traction Company, an electric traction line running from Parsons, Kans., through Coffeyville and Delaware, to Nowata, Okla., and also on the rails of the St. Louis, Iron Mountain & Southern Railway, part of the Missouri Pacific system and hereinafter so referred to. The refineries and storage tanks of three oil companies are located in or near Delaware. These oil companies formerly shipped gasoline and

other petroleum products to market via the Missouri Pacific. The service of this line was not deemed satisfactory. It is alleged that the switching at point of origin and destination was not performed promptly, and that the cars were delayed in transit. As a measure of relief one of the oil companies contemplated building a pipe line from Delaware to Coffeyville. At the time the traction company's line was being constructed at Delaware it was requested to lay switch tracks to the storage tanks of the oil companies located at or near that point and to arrange for the handling of oil traffic to Coffeyville, a distance of 18 miles. It was agreed that if this was done, and the traction company would establish a reasonable rate, the proposed pipe line would not be constructed. Effective July 1, 1915, the traction company published a rate of \$12.50 per car, which was later changed to 1.9 cents per 100 pounds, and has been handling practically all of the gasoline traffic out of Delaware since that time. Its service, it is stated, has been satisfactory to the shippers. The Atchison, Topeka & Santa Fe and Missouri, Kansas & Texas railways, which handle the traffic north of Coffeyville, have cooperated with the traction company to make the through service as expeditious as possible. For example, the Missouri, Kansas & Texas has been handling the empty tank cars returned from Kansas City to Coffeyville on a fast train carrying merchandise and other high class traffic and making direct connection with the southbound train of the traction line from Coffeyville. The Atchison, Topeka & Santa Fe, which has been handling the empty cars from Kansas City on a slow freight train, has about completed arrangements to handle them on its fast train carrying merchandise and other high class traffic to Coffeyville in order to make the connection with the southbound train of the traction line. The gasoline is forwarded from Delaware on through bills of lading.

In *Midcontinent Oil Rates*, 86 I. C. C., 109, which involved the rates on petroleum and its products from all producing points in the midcontinent field to numerous consuming markets, we held, among other things, that from Kansas and Oklahoma producing points, respectively, rates of 10 cents and 15 cents to Kansas City and points taking same rates, and of 20 cents and 23 cents to Omaha and points taking same rates, would be just and reasonable to apply as maxima for the future. No change was made in the existing differences in rates from Oklahoma producing points over Kansas producing points to the destinations referred to, these differences in rates being 5 cents to Kansas City and 3 cents to Omaha.

By routing their gasoline traffic over the traction line to Coffeyville and the steam roads beyond, the shippers have been able to secure through rates from Delaware 3.1 cents less to Kansas City

and 1.1 cents less to Omaha than the rates from Delaware in effect via the Missouri Pacific. This condition has existed since July 1, 1915, but no attempt was made to change it until September and October, 1916, when the tariffs suspended herein, naming proportional rates from Coffeyville, applicable on shipments from Delaware, 3.1 cents to Kansas City and 1.1 cents to Omaha higher than the corresponding local rates, were filed. The purpose of the proposed proportional rates is to equalize the through rates in effect via the traction line and its connections with those in effect via the Missouri Pacific.

The traction company does not participate in joint rates with respondents from Delaware or any other point in Oklahoma, respondents having declined to give it representation in their tariffs applicable on interstate traffic. Before publishing the rate of 1.9 cents per 100 pounds, which is equivalent to about \$10 per tank car of 8,000 gallons, the traction company investigated what it termed the "cost" of handling gasoline from Delaware to Coffeyville and found it to be between \$5 and \$6 per car. The traction company is satisfied with its earnings on this traffic, which moves in trainloads and amounts to over 150 cars per month.

The local rates of 10 cents and 20 cents from Kansas producing points to Kansas City and Omaha, respectively, which were found just and reasonable as maxima for the future in the *Midcontinent Oil Case*, apply on all shipments of petroleum and its products of whatsoever origin from Coffeyville to the destinations in question. No change is proposed in those rates except as applicable on traffic originating at Delaware. Three refining companies have plants in Coffeyville located from one-half mile to 2 miles from the local yards of respondents where the freight trains from and to Coffeyville are assembled and broken up. The connection of the traction line with the Atchison, Topeka & Santa Fe in Coffeyville is in the local yard of the latter line, and with the Missouri, Kansas & Texas about one-half mile from the local yard of that line. The traction line has no direct connection with the Missouri Pacific in Coffeyville, connection with that line being made through either of the other two respondents named. There is no substantial difference in the physical service performed in handling shipments from the plants in Coffeyville as against shipments delivered to them by the traction line in Coffeyville.

Respondents contend that the protesting shippers can have no grievance in respect to proportional rates, unless the through rates, of which the proposed rates are a component part, are unreasonable. They further claim that the through rates of 15 cents and 23 cents from Delaware and other Oklahoma producing points to Kansas City and Omaha, respectively, were adjudged reasonable

in the *Midcontinent Oil Case*. While there is no question about the soundness of the principle above referred to, it can not be applied to the facts of this case. In the first place, the proposed proportional rates, at least so far as the Atchison, Topeka & Santa Fe and Missouri, Kansas & Texas railways are concerned, are not component parts of the rates from Delaware which were involved in the *Midcontinent Oil Case*. The combination through rates applicable via the traction line and its connections, although in effect at the time of the hearing in the *Midcontinent Oil Case*, were not brought in issue in that proceeding. The rates of 15 cents to Kansas City and 23 cents to Omaha were not adjudged reasonable for application by the electric traction line and its connections from the single point of Delaware, distances of 185 miles and 380 miles, respectively. They were adjudged reasonable for application via steam railroads from a large group of producing points averaging 251 miles to Kansas City and 449 miles to Omaha. We can not assume, for the purposes of this case, that those rates would be reasonable for application via the traction line and its connections from Delaware to Kansas City and Omaha, in face of the duly published rate of 1.9 cents from Delaware to Coffeyville, which the traction line insists, and the record shows, is a reasonable maximum rate for transportation over that line, and of the rates of 10 cents and 20 cents from Coffeyville to Kansas City and Omaha, respectively, which we found reasonable as maxima after an exhaustive investigation in the *Midcontinent Oil Case*.

We find and conclude that respondents have not justified the proposed proportional rates. The suspended tariffs must be canceled, and it will be so ordered.

43 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 841.
FRUIT REFRIGERATION.

Submitted December 28, 1916. Decided February 5, 1917.

In view of the confusion and uncertainty of the record in respect of a question of controlling importance; *Held*, That the proposed increased refrigeration charges from points in the states of Idaho, Oregon, Montana, and Utah to points in other states have not been justified.

H. A. Scandrett for respondents.

D. A. Dunning and *John W. Graham* for Public Utilities Commission of Idaho.

H. W. Prickett for Mutual Creamery Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In *Arlington Heights Fruit Exchange v. S. P. Co.*, 20 I. C. C., 106, and in *Railroad Commission of California v. A. G. S. R. R. Co.*, 32 I. C. C., 17, respectively, we had under consideration the refrigeration charges of certain western lines on shipments of citrus and deciduous fruits from California. Subsequently all the carriers west of the Missouri River undertook a general revision of their refrigeration charges with the object, as is here explained, of establishing a more consistent schedule of charges, and also in order to bring to a compensatory level charges that had been kept on a depressed basis during the period of development in the fruit industry.

The changes proposed, in the tariffs described of record, by lines other than those embraced in the Union Pacific system, have already gone into effect, and without protest from any quarters. In respect, however, of the proposals by the last-mentioned lines, protests were made, directed more particularly against any change from Idaho points. In consequence of these objections all the changes embodied in the schedules filed by the Union Pacific lines were suspended. But upon further representations the order was so modified as to extend only to the changes proposed in the refrigeration charges on shipments from Idaho and Utah points, on shipments from a few related points in the state of Montana south of Butte, and also on shipments from points in the state of Oregon south and east of Huntington. The changes proposed in the charges from this compara-

tively small territory are here under consideration, and they are illustrated in the subjoined table:

Refrigerating charges per car.

To—	Present.	Proposed.	Amount of increases.
Colorado.....	\$40.00	\$45.00	\$5.00
Kansas and Nebraska.....	45.00	50.00	5.00
Iowa and Missouri.....	50.00	55.00	5.00
Illinois.....	50.00	55.00	5.00
Ohio and Indiana.....	55.00	60.00	5.00
Pennsylvania and New York.....	60.00	65.00	5.00
New England.....	65.00	70.00	5.00
Arkansas.....	55.00	65.00	10.00
Georgia and the Carolinas.....	67.50	75.00	7.50
Louisiana.....	62.50	70.00	7.50
Texas.....	62.50	65.00	2.50
New Mexico.....	47.50	65.00	17.50
Arizona via Denver.....	50.00	65.00	15.00
Arizona via California junctions.....	60.00	65.00	5.00

The evidence of record deals chiefly with the adjustment from Idaho points, and since the charges from the adjoining states are related we shall confine the discussion to the Idaho situation. From that state the movement of fruit is almost entirely to the eastern, the central, and the middle western states, to which territories the increases in the refrigeration charges from the principal producing points generally amount to \$5 per car. There was no movement through the Denver gateway in 1915 to Arizona and New Mexico, where the increases proposed amount, respectively, to \$15 and \$17.50 a car. Those unusually large additions to the going charges were made with a view to a better alignment between the present Idaho charges of \$47.50 and \$50, respectively, to New Mexico and Arizona and the prevailing \$75 charge from Oregon. A further reason for the larger increases in respect of shipments from Idaho to Arizona was that the charges through the Denver gateway might be equalized with the charges proposed on the same traffic over the shorter route through the California junctions. From the more distant and branch-line points in Idaho the charges and the increases are \$5 greater than those shown in the preceding table.

The respondents say that while the fruit industry was developing they did not concern themselves particularly with the amounts of the refrigeration charges; but now that the business has assumed larger and more stable proportions they feel that they should keep the charges from Idaho upon a level with those from competing and related districts. The present and proposed charges from Idaho and Utah to Chicago, and those maintained from other producing territories to Chicago, are graphically shown on a map introduced in evidence by the respondents for the purpose of exhibiting the rela-

tion rather than as a test of the reasonableness of the proposed charges. Converted into the form of a table the map shows the following comparisons:

Refrigeration charges per car.

To Chicago from—	Distances in hun- dreds of miles. ¹	Refrigeration charges.	
		Per car.	Per 100 miles.
Ida.	5	\$50.00	\$10.00
Utah	8	52.00	6.50
.....	10	55.00	5.50
.....	11	47.50	4.75
.....	11	58.88	5.36
.....	12	72.23	6.02
.....	16	77.00	5.13
.....	16	80.00	5.33
.....	18	80.00	5.77
.....	19	80.00	5.15
.....	19	90.00	4.73
.....	21	90.00	4.30
.....	22	75.00	3.41
Ida.	23	60.00	2.73
.....	25	77.50	3.09

¹ Fraction over 50 miles counted 100 miles.

² Proposed charge of \$55 equals \$5.50 per 100 miles.

From the west the charges now in effect are lower than the charges on shipments from the southwest and the southeast; and from Boise, a representative point in Idaho, the proposed charge, when measured in dollars per 100 miles, is on a lower level than the charge from Ogden, Huntington, and Sacramento. In *Railroad Commission of California v. A. G. S. R. R. Co.*, *supra*, a charge of \$75 a car from Sacramento to Chicago, tested by the cost of the service as well as by its relation to other charges, was found not to be unreasonable.

Refrigeration on the lines of the Union Pacific system and their connections is performed under contract by the Pacific Fruit Express Company, a corporation organized and owned by the Union Pacific and the Southern Pacific. The Pacific Fruit Express Company owns the cars in which the perishable commodities are carried; it has its own officers and employees and keeps its own accounts; but since it is merely an agent of the owning carriers and performs the refrigeration service for them, it is not shown as a party to their tariffs, nor is it a respondent here. That company, however, receives the full amount of the refrigeration charge and any profits included therein reach the respondent carriers only in the form of dividends.

Although the Pacific Fruit Express Company has been able to pay dividends of 10 per cent on its capital stock, figures were nevertheless introduced in evidence purporting to show that the present and proposed refrigeration charges from Idaho and Utah are insufficient to reimburse the respondents for the cost to them of performing the

service. On apples, shipped from points in Idaho during the year 1915, the cost table is as follows:

Icing	\$31. 58
Transportation of ice in car.....	19. 70
Damage to bunkers.....	5. 00
Switching at icing plants.....	1. 83
Supervision	3. 86
Total cost	61. 97
Revenue from refrigeration service.....	54. 77
Deficit.....	7. 20

On fruit other than apples the figures are:

Icing	\$33. 39
Transportation of ice in car.....	19. 01
Damage to bunkers.....	5. 00
Switching at icing plants.....	1. 95
Supervision	3. 77
Total cost.....	63. 12
Revenue from refrigeration service.....	51. 55
Deficit.....	11. 57

Under the proposed charges the deficits on the same basis of cost would have been \$2.68 and \$6.63, respectively. But the amounts representing "transportation of ice in car" and "switching at icing plants," aggregating, on apples and other fruits, respectively, \$21.53 and \$20.96, are items of expense that are not borne by the Pacific Fruit Express Company. Nevertheless that company, as before explained, receives the full refrigeration charge. In other words, excluding the items of expense just mentioned, it is clear that instead of deficits the refrigeration charges would yield profits to the Pacific Fruit Express Company of approximately 35 per cent on apples and 22 per cent on other fruits. The respondent carriers, however, incur expenses in transporting the ice contained in the bunkers, and also in the performance of switching at the icing plants; and these services are rendered without charge unless the freight rates include offsetting compensation or the respondents receive reimbursement in the dividends paid to them by the Pacific Fruit Express Company. Some of the traffic moves to eastern points beyond the rails of the respondent carriers, and therefore the eastern lines participate to some extent in hauling the ice contained in the bunkers, and also perform switching services at the icing plants on their lines; but unless compensation for such services is included also in their proportion of the joint through rates the eastern lines receive no compensation, since they do not share in the dividends paid to its shareholders by the Pacific Fruit Express Company.

In *Arlington Heights Fruit Exchange v. S. P. Co., supra*, and in *Railroad Commission of California v. A. G. S. R. R. Co., supra*, we analyzed the different elements of service and cost that properly should be included in the refrigeration charge. Among other questions involved in those cases we were required to determine, upon what was not altogether satisfactory evidence, whether the freight rates included compensation to the carriers for switching cars to and from the icing stations, and for hauling the ice contained in the bunkers. The difficulty which there confronted us is present in the case here before us.

The figures introduced in evidence by the respondents in this proceeding do not represent the actual cost of their refrigeration services on Idaho traffic. For the most part those figures are based upon the conclusions reached in the cases just cited, where the principle was laid down that all costs incident to the extra and special service of refrigeration should be taken into account in fixing a reasonable refrigeration charge, subject, however, to the qualification that where the freight rate already included full compensation for those extra and special services the shipper should not again be required to pay for them in the form of separate charges. In this principle the protestants now before us fully acquiesce, but they challenge the propriety of the increases here proposed chiefly upon the ground that the freight rates include compensation for transporting the ice contained in the bunkers and switching the cars to and from the icing plants. In support of this contention the protestants rely upon the testimony of the chief rate witness for the respondents. This witness on direct examination testified that the freight rates were made, as are most other freight rates, with relation to the rates from contiguous competing territory, and that while extra services were in mind when the rates were fixed nothing was added to represent the extra services just mentioned. He also pointed out that the rates on fruit under ventilation were the same as the rates on fruit under refrigeration, and therefore that the shipper of fruit under ventilation paid for something he did not get if the freight rate included compensation for the services under discussion. Upon cross-examination, however, the same witness unqualifiedly admitted that the freight rates did include compensation for the services of hauling the ice contained in the bunkers and for switching to and from the icing plants. He said that he "figured" that the freight rate compensated the railroad company for hauling the freight, for hauling the ice contained in the bunkers and for doing the switching, and he did not "figure" that the railroad company had any claim to make upon the refrigerator company on account of the performance of the switching and the hauling of the ice. The respondents

maintain that, in the light of his direct testimony and of the previous decisions of the Commission, the admission made by this witness on cross-examination does not have the effect asserted by the protestants. The respondents made no effort, however, to reconcile the conflicting testimony offered in their behalf, but left the record in a state of confusion and uncertainty in respect of a question of controlling importance. Their contention that the charges here under consideration are reasonable is therefore without substantial support upon the record, and a finding that the charges have been justified could be sustained only from inferences to be drawn from conclusions reached by the Commission in other cases and not from the record here before us.

In view of the conflicting testimony, and especially in the absence of other evidence to show whether the freight rates do include compensation for transporting the ice contained in the bunkers and for switching the cars to and from the icing plants, or whether the eastern carriers do or do not receive compensation for the part of such services that they perform, we can reach no conclusion other than that the respondents have failed to sustain the burden cast upon them to justify the increased charges here under consideration. An order will be entered requiring the cancellation of the schedules.

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**INVESTIGATION AND SUSPENSION DOCKET No. 848.
MOLDING SAND TO NASHVILLE, TENN.**

Submitted November 19, 1916. Decided February 13, 1917.

Proposed increased rates on molding sand in carloads from Louisville and Newport, Ky., to Nashville, Tenn., found justified in part. Schedules under suspension ordered canceled, but without prejudice to the filing of tariffs conforming to the findings herein.

Joseph G. Kerr, jr., for Louisville & Nashville Railroad Company.
T. M. Henderson for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect May 15, 1916, the Louisville & Nashville Railroad Company, hereinafter called the respondent, proposed to increase the rates on molding sand, in carloads, from Louisville and Newport, Ky., to Nashville, Tenn. Upon protest filed by the Traffic Bureau of Nashville, the schedules were suspended until September 12, 1916, and later until March 12, 1917. The present rates are 5 cents per 100 pounds from Louisville and 7 cents per 100 pounds from Newport, equivalent to \$1 and \$1.40 per short ton, respectively, minimum marked capacity of car. The suspended rates are \$1.40 per short ton from Louisville and \$2 per short ton from Newport. At the hearing respondent stated that the suspended rates would be slightly excessive and expressed willingness to publish a rate of \$1.20 per short ton from Louisville and a rate of \$1.60 from Newport, minimum 60,000 pounds. These rates will hereinafter be referred to as the proposed rates. All rates stated hereinafter are in amounts per short ton, unless otherwise specified.

Prior to March 6, 1898, the rates on molding sand in carloads from Louisville and Newport to Nashville were \$1.40 and \$2, respectively. Consumers at Nashville advised respondent that these rates were too high and that they would forward their shipments of sand from Louisville and Newport to Nashville by way of boat lines operating on the Ohio and Cumberland rivers unless respondent established rates of \$1 from Louisville and \$1.40 from Newport. As a result of these complaints, the rates sought were voluntarily established by respondent on March 6, 1898, and have applied since that date.

In justification of the proposed rates respondent states that the present rates are relatively lower than the rates from Louisville,

Newport, Cincinnati, Ohio, and other Ohio River crossings to various consuming points in the south; that they are lower than the rates from Louisville and Newport to points intermediate to Nashville; and moreover that they are unremunerative. It compares the present and proposed rates with rates on molding sand from Louisville and Newport to other points, as follows:

To—	From Louisville.			From Newport.		
	Dis- tance.	Rate.	Revenue per ton- mile.	Dis- tance.	Rate.	Revenue per ton- mile.
	Miles.		Miles.	Miles.		Miles.
Nashville, Tenn.....	187	{ ¹ \$1.20 : 1.00	6.4 5.2	207	{ ¹ \$1.60 : 1.40	6.4 4.7
Harriman, Tenn.....	235	1.75	7.4	259	1.75	6.8
Knockville, Tenn.....	277	1.75	6.3	292	1.75	6.0
Chattanooga, Tenn.....	314	1.75	5.6	338	1.75	5.2

1Proposed.

2Present.

Respondent urges that the rates cited have long been in effect; that considerable traffic moves under them, and that, therefore, they are a proper measure of the rates from Louisville and Newport to Nashville. The sand pit from which the Newport rate applies is located at Bellevue, Ky., on the Chesapeake & Ohio Railway, 1¼ miles from respondent's line, and respondent absorbs a charge of \$2 per car for the movement to its line. The rates shown in the above table from Newport, therefore, actually yield revenues per ton-mile which are less than those shown in the table. From Bellevue, the cars are switched 5 miles to Latonia, Ky., at which point respondent's trains are made up. Considerable terminal service is rendered at Louisville on shipments of molding sand from that point and a still further terminal expense is necessary at Nashville and at the other points named.

The present rates are lower than the rates on molding sand from Louisville and Newport to points intermediate to Nashville. For example, the rate from Newport to Gallatin and Maplewood, Tenn., intermediate from Newport to Nashville, is \$1.50, 10 cents higher than the rate from Newport to Nashville. The rates from Louisville to these intermediate points are also higher than the Louisville-Nashville rate. These fourth section departures are protected by an appropriate fourth section application, but the proposed rates would remove the departures.

During the year ended June 30, 1916, 41 carloads of molding sand moved from Louisville and Newport to Nashville by way of respondent's line; 30 carloads by way of the Tennessee Central Railroad and connections; and 4 carloads by way of the Nashville, Chattanooga &

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St. Louis Railway and connections. Box cars are required for this service, as shipments of molding sand are subject to damage from cinders or rain. It is contended that the loading of box cars from these points of origin deprives respondent of the use of such cars for the loading of high class commodities which yield revenues which are substantially higher than the revenues derived from the transportation of molding sand.

The present rates have been in effect since March, 1898, and this the protestant contends raises a presumption that they are reasonable. It urges that the proposed minimum weight of 60,000 pounds would not result in a benefit to shippers, as molding sand from and to the points in question invariably loads to marked capacity of cars; that the charges have gradually been increasing on this traffic with the increase in the capacity of respondent's cars; and that an additional increase in the rate at this time is not justified. To show that the proposed rates would be unreasonable, rates maintained by the Nashville, Chattanooga & St. Louis Railway are cited as follows: A rate of \$1.20 on sand and gravel in carloads for distances of 300 miles between main-line points; rates ranging from 90 cents to \$1.10 on sand, gravel, and clay in carloads for distances ranging from 171 miles to 212 miles from various points in Kentucky and Tennessee to Memphis, Tenn., and Atlanta, Ga.; and rates ranging from \$1.20 to \$1.50 on sand and clay in carloads for distances ranging from 244 miles to 369 miles from various points in Alabama and Tennessee to Nashville and Louisville. Protestant emphasizes a rate of \$1 on sand, in carloads, from Henry's Sandcut, Tenn., to Atlanta, Ga., 212 miles, and it is urged that transportation conditions between those points are less favorable than those obtaining between the points here in question. At the time of the hearing the rate on clay to Louisville from Hollow Rock Junction, Tenn., 280 miles, was \$1.30, and from Sommerville, Tenn., 369 miles, \$1.50. The present rate on clay to Louisville from Hollow Rock is \$1.40, and from Sommerville \$1.60. Apparently the rates from and to the last-named points were established to meet rates from near-by points which have a direct line to Louisville. A rate of 6 cents per 100 pounds, equivalent to \$1.20 per ton, minimum 40,000 pounds, on common and ornamental brick, carloads, from Louisville to Nashville is also cited. Apparently molding sand does not move between the points cited in comparison by protestant, and, furthermore, the rates cited were established to apply on common building sand. Molding sand is worth from 70 cents to \$1.20 per ton, while building sand generally ranges in value from 50 cents to 75 cents per ton, but some building sand is worth only 35 cents per ton. Respondent states that a movement of building sand for a distance of 300 miles would be most unusual.

We find that the rates of \$1.40 per short ton from Louisville and \$2 per short ton from Newport have not been justified, but that respondent has justified the rates of \$1.20 per short ton from Louisville and \$1.60 per short ton from Newport which it proposed at the hearing. An order will be entered requiring the cancellation of the suspended schedules, but without prejudice to respondent's filing tariffs on not less than five days' notice carrying rates herein found justified.

INVESTIGATION AND SUSPENSION DOCKET No. 690.
VEHICLES FROM TOLEDO, OHIO.

Submitted November 12, 1915. Decided February 6, 1917.

Proposed tariff changes whereby increased rates will result on vehicles from Toledo, Ohio, to points in the south, found not justified and suspended schedules required to be canceled.

Edward D. Ryan for protestant.

D. P. Connell for respondents.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect August 7, 1915, respondents proposed to cancel their present proportional carload and less-than-carload commodity rates on various vehicles from Toledo, Ohio, to Ohio River crossings and Virginia cities, published for use in making through rates to points in the south and southeast, and to provide for the application of class rates, which are higher. Upon protest by the Milburn Wagon Company of Toledo the schedules were suspended until December 5, 1915, and later until June 5, 1916. Upon voluntary action by respondents, under special permission of the Commission, the effective date of the suspended schedules was postponed until March 5, 1917.

In *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.*, 22 I. C. C., 93, decided December 12, 1911, we found that the class rates, governed by official classification, applicable to Ohio River crossings and Virginia cities, from Toledo, on vehicles specified in that case, when destined to the south and southeast, were unreasonable *per se* and unjustly discriminatory as compared with proportional rates governed by southern classification from Chicago, Ill., Milwaukee, 43 I. C. C.

Wis., and certain other points; and that the rates to those basing points from Toledo should not exceed the rates contemporaneously maintained from Chicago and points taking the Chicago rates. Lower rates were prescribed and established in accordance with those findings. The life of the order entered in that proceeding has since expired, and the object of the schedules here under suspension is to reestablish the basis condemned in that proceeding.

Upon the hearing respondents offered no evidence, for the stated reason that it would be a mere duplication of the defendants' evidence in the pending case of *Traffic Bureau of the Toledo Commercial Club v. C., H. & D. Ry. Co.*, Docket No. 7761. They stated that a disposition of that case adversely to the carriers would necessarily govern this case.

In that case, however, Toledo and other cities complained of the rates from those points to points in southeastern states, made by use of the local class rates to Ohio River crossings, as unreasonable, but more particularly as unduly prejudicial in view of the lower basis of proportional commodity rates similarly applied from Chicago and other points to those crossings. Since the effective date of our order in the *Milburn Wagon Co. Case*, *supra*, class rates have not been so applied on the particular traffic here in question, and as their prospective application was not called in question in the *Toledo Case*, the issue in that case does not embrace the issue here presented.

We find that respondents have not established the propriety of the increased rates proposed, and the suspended schedules will be ordered canceled.

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INVESTIGATION AND SUSPENSION DOCKET No. 894.
GRAIN FROM INDIANAPOLIS, IND.

Submitted November 23, 1916. Decided February 6, 1917.

Proposed tariff changes whereby increased rates will result on grain, grain products, and hay from Indianapolis, Ind., and points taking the same rates, by way of Cincinnati, Ohio, to certain points in Indiana, found to have been justified, and orders of suspension vacated.

***J. G. Moore* for Cincinnati, Indianapolis & Western Railroad Company.**

***R. D. Hunter* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.**

***F. M. Renshaw* and *J. E. Kuntz* for protestant.**

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect August 1 and 20, 1916, respondents proposed to cancel their joint rates of 6.3 cents per 100 pounds on grain and grain products, and 10 cents per 100 pounds on hay, from Indianapolis, Ind., and from Moorefield and Speedway, Ind., suburbs of Indianapolis, by way of Cincinnati, Ohio, to Lawrenceburg Junction, Lawrenceburg, Greendale, Greensburg, and Aurora, Ind., leaving in effect no joint rates and rendering applicable combinations of intermediate rates which are higher than the present rates. The published tariff provision under rule 77 of Tariff Circular 18-A, for the establishment of the 6.3-cent rate on grain and grain products, which is a commodity rate, from Morristown, Gwynville, and Arlington, Ind., intermediate points of origin, to the points of destination above named will not be operative if the proposed cancellations are permitted to take effect; and there will also be eliminated, in connection with the 6.3-cent rate on grain and grain products, the routing from Indianapolis and intermediate points by way of Cincinnati to Mitchell, North Vernon, Seymour, Washington, and Vincennes, Ind. Upon protest by the Cincinnati Chamber of Commerce the schedules were suspended until November 29, 1916, and later until May 29, 1917.

From Indianapolis to the destinations involved by the direct line of the Cleveland, Cincinnati, Chicago & St. Louis Railway, hereinafter called the Big Four, the distances are: To Lawrenceburg Junction, 87.3 miles; Lawrenceburg, 90 miles; Greensburg, 46.8

miles; and Aurora, 93.9 miles. Over the present three-line route of the Cincinnati, Indianapolis & Western Railroad to Hamilton, Ohio, the Cincinnati, Hamilton & Dayton Railway to Cincinnati, and the Big Four beyond, the distances are: To Lawrenceburg Junction, 146.8 miles; Lawrenceburg, 149.5 miles; Greensburg, 187.3 miles; and Aurora, 153.4 miles. Greendale is a small nonagency station.

Distances from Indianapolis by way of Cincinnati over the routes via which it is proposed to cancel the joint rates exceed the distances by the respective short intrastate lines by the following percentages: To North Vernon, 316.2 per cent; to Seymour, 358.8 per cent; to Mitchell, 274.4 per cent; to Washington, 261.9 per cent; and to Vincennes, 265.9 per cent. Respondent, the Cincinnati, Indianapolis & Western Railroad, now participates and will continue to participate in routes from and to these points which are somewhat longer than the direct routes but considerably shorter than the routes through Cincinnati.

The Cincinnati, Indianapolis & Western Railroad, hereinafter called the respondent, testifies that on its organization in December, 1915, it took over from its predecessor, the Cincinnati, Hamilton & Dayton Railway, the tariffs and rates under consideration. These tariffs did not specify or restrict the routing and permitted the application of the rates by way of any line shown as a concurring party. This adjustment included, respondent claims, abnormally long and circuitous interstate routes, which it is now attempting to close. Lower rates apply by intrastate routes, and if the proposed cancellation becomes effective departures from the fourth section will be eliminated. Respondent insists that it is unreasonable to require it to participate in traffic over a circuitous route, involving a three-line prorata, which traffic can move by the direct line of the Big Four; that the rate on grain products from intermediate points would be a paper rate, there being no movement; and that naturally respondent has no working arrangement with the Big Four to handle traffic from Indianapolis to stations on that line by way of Cincinnati.

Protestant introduced no evidence.

We find that respondents have justified the proposed cancellations, and an order will be entered vacating the orders of suspension as of April 2, 1917.

INVESTIGATION AND SUSPENSION DOCKET No. 860.
COAL TO BROOKSVILLE, KY.

Submitted December 2, 1916. Decided February 6, 1917.

Proposed increased rates on coal from mines on the Chesapeake & Ohio Railway in West Virginia and Kentucky to Brooksville, Ky., found justified in part. Schedules under suspension ordered canceled, but without prejudice to respondents' filing tariff conforming to the findings herein.

***W. E. Coleman and H. L. Corlis* for Brooksville Railroad Company.**

***P. M. Flannery and F. M. Renshaw* for protestant.**

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect June 15, 1916, the Chesapeake & Ohio Railway Company, hereinafter called the Chesapeake & Ohio, and the Brooksville Railroad Company proposed to cancel their joint rates of \$1 and \$1.10 per short ton on bituminous coal from mines on the Chesapeake & Ohio in West Virginia and Kentucky to Brooksville, Ky., thereby rendering applicable combination rates based on Wellsburg, Ky., which would be in some instances 25 cents and in others 30 cents per ton higher than the present joint rates. Upon protest by a dealer in and consumers of coal at Brooksville, the schedules were suspended until October 13, 1916, and later until April 13, 1917. The Chesapeake & Ohio was not represented at the bearing.

The points of origin are grouped. The evidence adduced relates only to the proposed cancellation of the rates of \$1 per short ton from mines in groups 2, 3, 4, and 5, with resulting increases of 25 cents per short ton in a few instances and 30 cents in others. No reference was made to the joint rate of \$1.10 from mines in group 1.

The present joint rates of \$1 are divided, 80 cents to the Chesapeake & Ohio and 20 cents to the Brooksville Railroad. The desired cancellation will enable the latter to apply its local rate of 45 cents. The Brooksville Railroad maintains that it can not pay expenses and continue to operate its line unless it is permitted to increase its rates on coal and on other commodities.

The Brooksville Railroad Company was organized in 1895, with subscriptions of local capital, to hold the county seat of Bracken

county, Ky., at Brooksville. It is in default in payment of part of the principal of, and practically all interest on, its bonded debt of \$22,000. No dividends have been paid on its paid-up capital stock of \$22,500. It owns no equipment except one flat car and one passenger coach. A locomotive is leased at \$5 per day. Its line extends from a junction with the Chesapeake & Ohio at Wellsburg, with a population of 70, to Brooksville, with a population of 492, a distance of 10.72 miles. The track is laid with light, worn steel and with inferior ties. Grades are as high as 8 per cent; curves as much as 23 degrees. Trains, scheduled two each way daily, consist of only two or three cars, and run irregularly, missing sometimes a day and sometimes a week because of derailments. Travelers prefer to use motor busses between Wellsburg and Brooksville, which charge the same fare as does the railroad. The number of employees has been reduced to a minimum, and they consist of a superintendent, an assistant superintendent, one train crew of three men, and three trackmen. Revenues are derived chiefly from the transportation of coal, lumber, merchandise, wire fencing, tobacco, and cattle. About 200 cars of coal are hauled annually, at an average revenue to the Brooksville line of about \$8 per car. Exhibits of financial conditions and decreasing business and traffic filed of record, while not in satisfactory form, tend to confirm evidence of record that the Brooksville Railroad can not pay operating expenses with revenues based on present rates.

The Brooksville Coal Company, a competitor of the principal protestant, is controlled and managed by officials of the Brooksville Railroad Company. It does not appear, however, that any unjust discrimination is practiced, nor can we find, as was alleged by protestants, that the proposed increased rates are not based on a desire for increased revenues, or that they will result in exorbitant charges for coal. Citizens of Brooksville ask that the proposed cancellation of the \$1 joint rates be allowed, so that the earnings of the Brooksville Railroad may increase and the line continue to operate.

On June 9, 1916, the freight traffic manager of the Chesapeake & Ohio advised the Commission by letter of its willingness to continue the present \$1 joint rates provided the Chesapeake & Ohio is allowed its division of 80 cents for the haul to Wellsburg. Its local rates for the hauls from groups 2, 3, 4, and 5 to Wellsburg are 85 cents.

Upon all the facts of record, we find that respondents have not fully justified the proposed increased rates, and an order will be entered requiring the cancellation of the suspended schedules. But they are hereby authorized to publish and file, instead, upon five

days' notice, joint rates of \$1.25 per short ton from the groups 2, 3, 4, and 5, out of which there will be available to the Chesapeake & Ohio its present division of 80 cents and to the Brooksville Railroad Company 45 cents, the amount of its local, as their respective proportions. Upon like notice and on a similar basis a joint rate from group 1 mines may and should be published.

INVESTIGATION AND SUSPENSION DOCKET No. 863.
LUMBER FROM INDIANA STATIONS.

Submitted November 10, 1916. Decided February 6, 1917.

Proposed increased rates on lumber from certain points in Indiana on the Southern Railway to points in central freight association territory and to certain points in Iowa, Missouri, and Kentucky found justified.

Alex M. Bull and *Claudian B. Northrop* for Southern Railway Company.

R. D. Hunter for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

A. Fletcher Marsh for Marsh & Truman Lumber Company.

Frank L. Bronez for Eberhard & Splater.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect June 15 and July 25, 1916, respectively, respondents proposed to increase their rates on lumber from Rockport, Rock Hill, Troy, Tell City, and Cannelton, Ind., hereinafter referred to as the Rockport group, to points in central freight association territory and to a few points in Wisconsin, Iowa, Missouri, and Kentucky just outside of the boundaries of that territory. Upon protests of interested shippers the schedules were suspended until October 18, 1916, and later until April 13, 1917. Rates are stated herein in cents per 100 pounds.

For the purposes of this case it will be necessary to consider only the rates to central freight association territory.

A main line of the Southern Railway, hereinafter called the Southern, extends from East St. Louis, Ill., almost due east, across the states of Illinois and Indiana, through Huntingburg, Ind., to Louisville, Ky. Points in the Rockport group and Evansville, Ind.,

are located on the Ohio River and are served either by a branch line of the Southern extending southward from Huntingburg or by minor branches diverging therefrom. Rockport group points are local to the Southern and are not river crossings. They have no connection with the Kentucky side by bridge or car ferry. Evansville is served also by the Chicago & Eastern Illinois, the Illinois Central, and the Louisville & Nashville railroads, and the Cleveland, Cincinnati, Chicago & St. Louis and the Louisville, Henderson & St. Louis railways. It is a river crossing and is reached from the south by the Louisville & Nashville, the Illinois Central, and the Louisville, Henderson & St. Louis.

In 1888 proportional rates were established on lumber to points in central freight association territory from Ohio River crossings 2 cents lower than the local rates from the crossings. These proportional rates were established to encourage the movement of lumber from producing sections in the south and southwest. Some time later the proportional rates from the river were made applicable by the direct lines on shipments from the crossings proper, and also from intermediate points. The other lines subsequently established the same rates on shipments from the crossings proper and from intermediate junction points. With a few exceptions the Evansville rates have, since 1910, applied from the Rockport group to points in central freight association territory generally. The usual basis for lumber in central freight association territory is and long has been sixth class.

In the past rates on lumber from the Rockport group to points in central freight association territory west of the Indiana-Illinois state line were published in tariffs of the Southern, and also in agency tariffs. It sometimes happened that tariffs contemporaneously applicable carried slightly different rates between the same points, and some conflict resulted. Since 1910 rates from the Rockport group to points in central freight association territory east of the Indiana-Illinois state line have been published only in agency tariffs. Prior to May, 1916, they were the same as the rates from Evansville; at that time they were increased 2 cents. On September 1, 1916, they were canceled and reference made to the Southern's tariff I. C. C. No. C-1705 for future rates, but on October 25, 1916, they were reestablished under special permission of the Commission. As tariff No. C-1705 had been suspended in connection with this proceeding and has never been in effect, it appears that the class rates were applicable between September 1 and October 25, 1916.

The rates from the Rockport group proposed in the Southern's tariff No. C-1705 are 2 cents higher than the rates from Evansville, subject to the sixth-class rates as maxima. It was proposed in the agency tariffs under suspension to increase the rates from the Rockport group to points in central freight association territory west of

the Indiana-Illinois state line 2 cents. However, the Southern's tariff names rates to points in central freight association territory both east and west of the Indiana-Illinois state line, and it is the intention of respondents to eliminate Rockport group rates from other publications.

Proposed rates to representative points are as follows: 12½ cents to Belvidere, Camp Grove, Chicago, Davis Junction, Nelson, Rockford, and West Chicago, Ill., for distances ranging from 329 miles to 515 miles; 14.2 cents to Grand Haven, Grand Rapids, Holland, and Sturgis, Mich., for distances ranging from 376 miles to 438 miles; 14.6 cents to Detroit and Hastings, Mich., and Toledo, Ohio, for distances ranging from 430 miles to 482 miles; 14.7 cents to Milwaukee, Wis., 414 miles.

It was testified that the Rockport group rates were reduced to the Evansville basis to enable points in that group to compete with river crossings on logs from the Ohio River. Similar reductions were not made from intermediate local stations on the Southern, and this resulted in complaints from the intermediate points. In *Collier v. S. Ry. Co.*, Docket No. 5888, unreported, wherein rates of 12 cents on lumber to Chicago from certain points on the Southern's main line between East St. Louis and Louisville were canceled, we found that the rates assailed were not unreasonable and that discrimination did not result from the maintenance of lower rates from the Rockport group. In *Stimson v. S. Ry. Co.*, 40 I. C. C., 169, we found a rate of 10 cents on lumber to Shelbyville, Ind., from Huntingburg not unreasonable, but denied the Southern's application for authority to charge a rate from Huntingburg to Shelbyville higher than the rate from the Rockport group, Huntingburg being intermediate from that group to Shelbyville.

Respondents testified that the conditions which prompted them to reduce the rates from the river crossings do not now obtain; that the present outbound movement of lumber, and articles taking lumber rates, from the Rockport group is small, probably not exceeding 50 carloads a year; and that a very large proportion of the logs milled at those points move in by rail or wagon, so that now there is practically no competition with river crossings with respect to logs from the river.

If the suspended tariffs become effective, the Rockport group will be placed upon the same basis as intermediate points, thus eliminating all fourth section departures. Respondents estimated that this would increase shippers' freight charges \$500 per year, while, on the other hand, if the rates from intermediate points were reduced to the level of the rates from the Rockport group, a decrease in the Southern's revenue of approximately \$10,000 per year would result.

The proposed rates would yield per ton-mile earnings ranging from 4.8 mills to 7.6 mills, while the car-mile earnings, based upon 48,000 pounds, which, it was testified, is the average loading of lumber in central freight association territory, would range from 11.6 cents to 18.2 cents.

Respondents cited by way of comparison numerous rates on lumber approved by us in former cases, some of which apply in central freight association territory, and which, generally speaking, are relatively higher than the rates proposed.

Respondents contend that the maintenance of rates from Evansville lower than the rates from the Rockport group is justified by competitive conditions at Evansville which do not obtain at the Rockport group points.

At the hearing reference was made to the application of the river crossings rates from Joppa, Ill., a local point on the Chicago & Eastern Illinois Railroad, located on the Ohio River. Joppa has no bridge or car ferry, but there is a movement of forest products to that point by barge from Paducah, Ky.

Routing under the present rates is unrestricted. The Southern's tariff No. C-1705, under suspension, specifies the routes to be used and restricts routing by way of the Illinois Central Railroad to shipments destined to points at which Illinois Central delivery is authorized under the suspended tariff, and this is objected to by protestant, Marsh & Truman Lumber Company. The only justification offered by respondents is that the Southern has no arrangement for divisions with the Illinois Central.

We find that respondents have justified the increased rates published in Southern Railway tariff I. C. C. C-1705, and the limitation of the application of said rates to the routes specified therein, with the exception of the elimination of the application of the joint rates in connection with the Illinois Central Railroad to points at which Illinois Central Railroad delivery is not authorized, which we find has not been justified. Our order suspending Southern Railway tariff I. C. C. C-1705 will be vacated, but respondents will be required to provide for the same routing on shipments from the Rockport group in connection with the Illinois Central Railroad as is at present available. The other schedules under suspension will be required to be canceled. Respondents may discontinue the publication in agency tariffs of rates on lumber from the Rockport group to central freight association territory and refer to Southern Railway tariff I. C. C. C-1705 for future rates.

An appropriate order will be entered.

No. 7804.
CITY OF MEMPHIS ET AL.
v.
**CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.**

Submitted May 8, 1915. Decided February 12, 1917.

Following our original report in this case, 89 I. C. C., 256, an order entered:

1. Prescribing a reasonable distance scale of maximum class rates between Memphis, Tenn., and points within the state of Arkansas on and east of the main line of the St. Louis, Iron Mountain & Southern Railway extending from Texarkana, Ark., through Little Rock, northeasterly toward St. Louis, and to points on the St. Louis, Iron Mountain & Southern Railway west of Little Rock on its line to Fort Smith, to and including Conway, Ark., and west from Newport, Ark., on the White River division, to and including Batesville, Ark.
2. Requiring the defendant carriers to remove the undue discrimination found to exist against Memphis due to the present relationship of class rates between Memphis and points in Arkansas on and east of the main line of the St. Louis, Iron Mountain & Southern Railway extending from Texarkana, Ark., through Little Rock, northeasterly toward St. Louis, and to points on the St. Louis, Iron Mountain & Southern Railway west of Little Rock on its line to Fort Smith, to and including Conway, Ark., and west from Newport, Ark., on the White River division, to and including Batesville, Ark., and class rates between points within that portion of the state of Arkansas described in this paragraph.
3. Requiring the defendant carriers to remove the undue discrimination found to exist against Memphis due to the present relationship of class rates between Memphis and points in northeastern Arkansas and class rates between St. Louis, Mo., and East St. Louis, Ill., and these same Arkansas points.
4. Fourth section relief granted to carriers having indirect routes.

Same appearances as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The complaint in this case, filed on behalf of the city of Memphis, Tenn., and other Memphis interests, put in issue, among other things, the reasonableness of the interstate class rates between Memphis and points in Arkansas together with the question of discrimination between these interstate rates and the state class rates within Arkansas. It was also alleged that the class rates between Memphis and points

in northeastern Arkansas, when compared with the class rates between St. Louis, Mo., and East St. Louis, Ill., and the same Arkansas points, result in a relationship unduly prejudicial to Memphis. In our original report, 39 I. C. C., 256, we found in part, page 265:

that the maintenance of class and commodity rates between points in Arkansas lower by more than a reasonable bridge toll across the Mississippi River than the interstate class and commodity rates for similar distances between Memphis and Arkansas points contemporaneously in effect results in a relationship between state and interstate rates which is unduly prejudicial to Memphis and constitutes a burden upon interstate commerce. This discrimination the carriers will be required to remove. *Houston East & West Texas R. R. Co. v. U. S.*, 234 U. S., 342.

And further, on page 266:

When we consider that on the hauls between Memphis and Arkansas points a bridge service is included * * * we consider that the rate comparisons introduced by the defendants amply support a finding that the class rates between Memphis and Arkansas points covered by the complainants' petition, except as otherwise noted herein, are just and reasonable in and of themselves.

With regard to the alleged discrimination against Memphis in the relationship of the class rates between St. Louis and East St. Louis and northeastern Arkansas points and between Memphis and these same northeastern Arkansas points, the Commission further said, page 269:

We are of opinion, therefore, and find that the present interstate class and commodity rates between Memphis and northern Arkansas points, such as Black Rock, Knobel, and Paragould, are reasonable as a whole. In view of the greater distances from St. Louis and East St. Louis to these points we are of opinion that the St. Louis and East St. Louis rates are unduly prejudicial to Memphis. This discrimination the carriers will be required to remove.

Since the main issues of the case were so extensive, involving as they did the entire rate adjustment of the defendant carriers, both state and interstate, between Memphis, St. Louis, and East St. Louis and Arkansas points, and since the new standard distance tariff No. 5 applicable on intrastate traffic in Arkansas had only recently gone into effect, thus modifying to some extent at least the rates within Arkansas at the time of filing the complaint, we issued no final order, except as to certain particular rates and practices which were specifically attacked and upon which specific and final findings were made, but held the case open in order to give any party feeling its interests prejudiced by the findings therein an opportunity to file exceptions to our general findings with regard to the interstate class and commodity rates therein found just and reasonable, on the condition that whatever objections were made should be directed specifically against particular rates, either class or commodity, between particular points. No exceptions sufficiently specific to fall within

these requirements were filed on behalf of any of the interested shippers. The carriers involved, however, pursuant to these conclusions and on account of the desirability of a uniform scale of class rates between Memphis and Arkansas points, submitted for our consideration a proposed interstate class-rate adjustment based on mileage between Memphis and Arkansas points, together with certain proposed increased class rates from St. Louis and East St. Louis to northeastern Arkansas points, aimed at removing the discrimination found to exist against Memphis in the present relationship. This case now comes on for further consideration preliminary to the entry of an order covering that phase of our original findings which involved the class rates in issue.

There is no uniformity in the present class rates between Memphis and points in Arkansas. For instance, different rates apply for equal distances over the different lines of the same carrier, and often the same rates apply for different distances over the different lines of the same carrier or over the lines of different carriers. At an informal conference of all the interested parties it was admitted both by the carriers and the shippers that a uniform distance scale of class rates between Memphis and Arkansas points was essential in order to give real relief in so far as the present prejudicial relationship between state and interstate rates was concerned; that the entry of a general order finding the present interstate rates between Memphis and Arkansas points reasonable and requiring the carriers to do away with the discrimination would not be sufficient. It is obvious that only by establishing a uniform class-rate scale between Memphis and Arkansas points which the carriers may use in adjusting their class rates intrastate in accordance with our findings can a practical solution of the question be reached. Any other course will result in confusion and further litigation.

Hereafter the defendant carriers will be required to establish class rates no higher than those prescribed in the following distance scale between Memphis and points in Arkansas, located on and east of the main line of the St. Louis, Iron Mountain & Southern Railway, extending from Texarkana, Ark., through Little Rock northeasterly toward St. Louis, and to points on the St. Louis, Iron Mountain & Southern Railway, west of Little Rock on its line to Fort Smith, Ark., to and including Conway, Ark., and west from Newport, Ark., on the White River division, to and including Batesville, Ark.

Distances.	1	2	3	4	5	A	B	C	D	E
1 to 5 miles, inclusive.....	22.0	18.9	15.6	12.4	9.8	10.1	7.9	6.7	5.7	4.7
6 to 10 miles, inclusive.....	24.0	20.6	17.0	13.5	10.5	11.0	8.6	7.3	6.2	5.2
11 to 15 miles, inclusive.....	26.0	22.4	18.5	14.7	11.4	11.9	9.4	7.8	6.8	5.6
16 to 20 miles, inclusive.....	29.0	24.9	20.6	16.4	12.8	13.3	10.4	8.8	7.5	6.2
21 to 25 miles, inclusive.....	32.0	27.5	22.7	18.1	14.1	14.7	11.5	9.8	8.3	6.9
26 to 30 miles, inclusive.....	34.0	29.2	24.2	19.2	15.0	15.6	12.2	10.4	8.8	7.3
31 to 35 miles, inclusive.....	36.0	31.0	25.6	20.3	15.8	16.5	13.0	11.0	9.4	7.7
36 to 40 miles, inclusive.....	38.0	32.6	27.0	21.4	16.7	17.5	13.7	11.6	9.9	8.2
41 to 45 miles, inclusive.....	40.0	34.4	28.4	22.6	17.8	18.4	14.4	12.2	10.4	8.6
46 to 50 miles, inclusive.....	42.0	36.1	29.8	23.7	18.5	19.3	15.1	12.8	10.9	9.0
51 to 55 miles, inclusive.....	44.0	37.8	31.2	24.8	19.4	20.2	15.8	13.4	11.4	9.5
56 to 60 miles, inclusive.....	46.0	39.6	32.6	26.0	20.2	21.2	16.6	14.0	12.0	9.9
61 to	48.0	41.3	34.1	27.1	21.8	22.1	17.3	14.6	12.5	10.3
66 to	50.0	43.0	35.5	28.2	22.0	23.0	18.0	15.2	13.0	10.7
71 to	52.0	44.7	36.9	29.4	22.8	23.9	18.7	15.9	13.5	11.2
76 to	54.0	46.4	38.3	30.5	23.9	24.8	19.4	16.5	14.0	11.6
81 to	56.0	48.2	39.8	31.6	24.6	25.6	20.2	17.1	14.6	12.0
86 to	57.0	49.0	40.5	32.2	25.1	26.2	20.5	17.4	14.8	12.3
91 to	59.0	50.7	41.9	33.3	26.0	27.1	21.2	18.0	15.3	12.7
96 to	60.0	51.6	42.6	33.9	26.4	27.6	21.6	18.3	15.6	12.9
101 to	62.0	53.3	44.0	35.0	27.3	28.5	22.3	18.9	16.1	13.3
111 to	64.0	55.0	45.4	36.2	28.2	29.4	23.0	19.5	16.6	13.8
121 to	67.0	57.6	47.6	37.8	29.5	30.4	24.1	20.4	17.4	14.4
131 to	70.0	60.2	49.7	39.6	30.8	32.2	25.2	21.3	18.2	15.0
141 to	73.0	62.8	51.8	41.2	32.1	33.6	26.3	22.3	19.0	15.7
156 to	76.0	65.4	54.0	42.9	33.4	35.0	27.4	23.2	19.8	16.3
171 to	79.0	68.0	56.0	44.6	34.8	36.3	28.4	24.1	20.5	17.0
186 to	81.0	69.0	57.0	45.7	35.6	37.2	29.2	24.7	21.1	17.4
201 to	84.0	71.0	59.0	47.5	37.0	38.6	30.2	25.6	21.8	18.1
216 to	86.0	73.0	62.0	49.7	38.8	40.5	31.7	26.8	22.9	18.9
231 to	92.0	78.0	64.0	52.0	40.5	42.3	33.1	28.0	23.9	19.8
246 to	96.0	82.0	67.0	54.2	42.2	44.1	34.6	29.3	25.0	20.8
261 to	100.0	86.0	70.0	56.5	44.0	46.0	36.0	30.5	26.0	21.5
276 to	105.0	89.0	74.0	59.4	46.3	48.4	37.8	32.0	27.3	22.6

This scale we find to be a scale of reasonable maximum class rates for the territory aforesaid. It reflects, in our opinion, the present interstate class rates between Memphis and these Arkansas points found reasonable as a whole in our original report. This fact, that it reflects existing rates previously found reasonable, will explain not only the level of first-class rates, but the percentages subsisting between first class and lower classes. In certain instances its application will result in lower rates, in other instances in increased rates; but on the whole this scale represents as nearly as possible the present interstate rates made uniform upon a distance basis. As the scale approximates and is substituted for the present class rates between Memphis and these points in Arkansas which presumably include a bridge arbitrary for the bridge crossing at Memphis, no allowance has been made for this bridge haul. Moreover, since the present class rates upon which this distance scale is based apply over one, two, and three lines, no arbitrary will be allowed where the haul is over two or more lines. Rates over branch lines as well as over the main lines of the carriers involved must also conform to the distance scale.

In establishing rates between Memphis and these points in Arkansas based on distance, the shortest workable route, whether over two or more lines, should be used. The carriers having circuitous routes, however, may meet the short-line rates at common points while

carrying higher rates to intermediate points, provided these rates are made upon the distance scale, and provided the lowest combination is not exceeded.

We found in our original report that the present relationship between the state class rates within Arkansas and the interstate class rates between Memphis and points in Arkansas is unduly prejudicial to Memphis and constitutes a burden upon interstate commerce in so far as the class rates between points in Arkansas are lower by more than a reasonable bridge toll across the Mississippi River than the interstate class rates for similar distances between Memphis and points in Arkansas contemporaneously in effect. While the exhibits of record cover all parts of the state and show an improper relationship between the state and interstate rates generally, the order entered herein will be given a more restricted application. The record abounds in instances where the interstate shipper, in actual competition with local jobbers, has to pay an unduly prejudicial rate, or where the interstate shipper's territory in Arkansas has been gradually restricted by reason of existing discriminations, or where he is excluded altogether on account of the discriminatory character of the existing state and interstate adjustment. The Arkansas jobbing centers with which Memphis is in competition are principally on and east of the main line of the St. Louis, Iron Mountain & Southern Railway, which runs from Texarkana, Ark., through Little Rock and continues northeasterly through the state. It is within this territory that the large number of instances of discrimination occur which are contained in the record.

The order which will be issued against the carriers will be limited for the time being to those points in Arkansas on and east of the main line of the St. Louis, Iron Mountain & Southern Railway extending from Texarkana, Ark., through Little Rock northeasterly toward St. Louis, and to points on the St. Louis, Iron Mountain & Southern Railway west of Little Rock on its line to Fort Smith, to and including Conway, Ark., and west from Newport, Ark., on the White River division to and including Batesville, Ark. If it shall hereafter appear that other unlawful discriminations growing out of the state and interstate rate relationship result in further damage to interstate shippers, or constitute an undue burden on interstate commerce, supplemental orders will issue upon sufficient showing.

It is apparent that whatever course the carriers take in removing this undue prejudice against interstate commerce in compliance with our order, the class rates between Memphis and these points in Arkansas must not exceed the class rates between these points in Arkansas by an amount greater than a reasonable bridge toll for the haul across the Mississippi River.

Since our original report was issued a new bridge, built and owned by the Arkansas & Memphis Railway Bridge & Terminal Company, has been completed across the Mississippi River at Memphis. Hereafter the Iron Mountain, the Cotton Belt, and the Rock Island will haul their traffic across this bridge into Memphis. It appears that the bridge company does not hold itself out as a common carrier, but that for the use of the new bridge the carriers pay the bridge company certain fixed arbitraries on the different classes. In our original report, page 273, we said with regard to the tolls over the old bridge:

The reasonableness of the present tolls is material only in determining the measure of a reasonable rate on freight moving over the bridge. By exhibit it is shown that the tolls of the bridge company vary from 1 to 2 cents per 100 pounds, 2 cents being charged on all but a few of the low rated commodities. * * * We are unable to find on this record that the present bridge tolls are excessive or that to add the amount thereof to an otherwise reasonable rate would make the resulting rate unreasonable.

While no doubt the Commission took into consideration the bridge tolls in effect over the old bridge at Memphis in determining the issue of the reasonableness of the present class and commodity rates, it does not necessarily follow that 2 cents is the maximum arbitrary which the carriers may charge on all traffic, nor that that must be the differential of the state class rates under the interstate class rates. At the informal conference of all the interested parties the carriers showed that the following tolls are now paid to the new bridge company on traffic passing over that bridge:

1	2	3	4	5	A	B	C	D	E
3	3	3	2	2	2	1½	1½	1½	1½

In the absence of evidence that these bridge tolls are unreasonable, and without making any finding thereon, we consider that these arbitraries may tentatively be used by the carriers in removing the discrimination against Memphis.

If it is found that certain long hauls within Arkansas require an extension of this interstate class scale beyond 300 miles in order to determine nondiscriminatory state rates, the carriers will be expected to grade up the interstate distance rates first class in conformity with the first-class rates prescribed for distances between 300 and 400 miles on page 266 of our original report. Rates for the lower classes should be made by applying the percentages underlying the prescribed scale to the first-class rates.

We are further of opinion that the application of this distance scale to points in northeastern Arkansas is not unreasonable. Here again there may be certain increases and certain decreases in rates at particular points, but on the whole it approximates the present interstate adjustment. In removing the discrimination found to exist in

the relationship of the present class rates between St. Louis and East St. Louis and these northeastern Arkansas points to the class rates between Memphis and the same Arkansas points, the carriers may lower the Memphis rates or increase the St. Louis and East St. Louis rates, or so lower the one and increase the other as to result in a non-discriminatory relationship, the scale herein prescribed to be observed as a maximum in the rates from Memphis. If the carriers establish this distance scale of class rates between Memphis and northeastern Arkansas points, we are of opinion and find that the discrimination against Memphis would not be removed by raising the present class rates between St. Louis and East St. Louis and these Arkansas points by less than 7 cents first class, with an *added* increase in the rates, first class, of 2 cents at Yarbrow, on the Chaffee division of the Frisco, 5 cents at Portia and Black Rock, 7 cents at Sloan, 9 cents at Imboden, and points north to and including Hardy, and 10 cents at Fickinger and Mammoth Springs, on the main line of the Frisco. Nondiscriminatory rates for the lower classes should be made by applying the same percentages of the first-class rates which now underlie the present adjustment to these suggested first-class rates between St. Louis and East St. Louis and northeastern Arkansas points. On taking 26 representative points on the rails of the Frisco, the Iron Mountain, and the Cotton Belt, the present average percentage basis is as follows:

1	2	3	4	5	A	B	C	D	E
100	83.1	66.7	53.5	39.4	42.7	34.7	29.2	23.5	18.4

A strict application of this low percentage basis might result in the continuance of the present discrimination against Memphis in such classes as C, D, and E, in spite of the suggested blanket increase in the rates first class. We therefore consider that the following percentage basis might properly be used:

1	2	3	4	5	A	B	C	D	E
100	84	67	53.5	39.5	43	35	29.5	24.5	19.5

No determination will be made at this time with regard to the commodity rates involved. The carriers will be allowed a reasonable time to submit a proposed adjustment. Thereafter a further order will be entered closing the case. Some uniformity in the state and interstate commodity rates, however, might be reached by establishing commodity rates certain percentages of the class rates on the classes to which the commodities belong.

Since the scale which will be prescribed herein conforms for the greater distances to the scale laid down in *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 224, it follows that should any change be made in the scale therein prescribed corresponding adjustments may be necessitated in the scale established in this case.

CLEMENTS, *Commissioner*, dissenting:

I am refraining from concurrence in the action taken by the Commission in this case for the reason that I think the matters involved should be further considered to the end that if, in the removal of unjust discrimination between interstate rates and Arkansas state rates, it becomes necessary for this Commission to practically fix the relationship between the two on the basis of equal distances, and first having determined the inherent reasonableness of interstate rates which are to be used as the mainstay by which the state rates are to be controlled over an area of one-half of the state, I feel that it is of prime importance and a real necessity that we should be sure that in endeavoring to remove the discrimination we go no further than is necessary to that end and that we do not fix the interstate standard rate too high, with a resulting establishment of rates on both interstate and intrastate traffic which might be unjust to the public. I do not mean to say that I am fully convinced that the interstate rates here sanctioned as a basis for action to be taken on the intrastate rates are unreasonably high. I am not convinced, however, that some of them are not too high. This situation is one calling for the greatest care and for cooperation between this Commission and the state commission, and while I realize the importance of the determination of cases arising before us as promptly as practicable, the soundness and correctness of our final action is of more importance than haste in the disposition of these cases. We have just reopened the so-called *Shreveport Case*, involving Texas rates, and as stated in our report in that case we were advised before taking action that the state authorities of Louisiana, which state was supporting the complaint in that case, would urge no objection against reopening. It is not strange that in the endeavor to apply for the first time the principles of the decision of the Supreme Court of the United States in the *Shreveport Case* we were confronted with many perplexities and difficulties. This is a new field of action, and I can but feel that it would be safer and would be more certain to ultimately promote the ends of justice and fairness if the instant case were further considered, having in view the possibility of the real and efficient cooperation that it is hoped may follow in the further consideration of the *Shreveport Case*, and would probably also follow in this case if further opportunity were afforded.

I am requested by COMMISSIONER HALL to state that he concurs in this dissent.

48 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 931.
WESTERN EXPORT IRON AND STEEL CASE.

Submitted January 10, 1917. Decided February 12, 1917.

Proposed increased commodity rates on iron and steel from Chicago, Ill., Pittsburgh, Pa., and other points, to Pacific coast terminals for export found to have been justified. Order of suspension vacated.

Robert Dunlap and T. J. Norton for respondents.

C. L. Lingo for Inland Steel Company.

W. E. Long for Manufacturers Association of Sterling, Ill.

C. S. Belsterling for United States Steel Products Company and its subsidiaries.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

Respondents, by schedules filed to become effective in October, 1916, proposed to increase their rates on iron and steel from Chicago, Ill., and Pittsburgh, Pa., among other points, to Pacific coast terminals for export. Upon protest these schedules were suspended until January 29, 1917, and later until July 29, 1917. Rates herein are stated in cents per 100 pounds.

Of the rates named in the suspended schedules, the protests and the evidence of record relate almost entirely to the rates on structural material destined to the ports, among others, of Yokohama, Kobe, Nagasaki, Moji, Japan; Shanghai, Hongkong, China; and Manila, P. I., hereinafter called the Orient. The present export rates to the Pacific coast ports are, from Chicago 30 cents, and from Pittsburgh 42 cents. These rates resulted from the efforts of the respondents to meet the competition by rail and water from Pittsburgh via the port of New York. The first attempt of the respondents to secure a share of the export traffic was represented by the establishment on August 25, 1909, of a 39-cent rate from Chicago to the Pacific coast ports. There was no movement on this rate and on November 1, 1913, a rate of 34½ cents was established, but without success. It was not until the present rate of 30 cents became effective on December 31, 1913, that an export movement via their lines westward was created. Thereafter, the Pittsburgh interests petitioned respondents for a 30-cent rate from Pittsburgh to the same ports, but as the lines east of Chicago refused to accept less than 12 cents

for their portion of the haul the rate of 42 cents was published from Pittsburgh.

It is proposed to increase the rate from Chicago from 30 cents to 40 cents and the rate from Pittsburgh from 42 cents to 45 cents, resulting in a spread of only 5 cents against Pittsburgh as compared with the present spread of 12 cents. Protestant, Inland Steel Company, of Indiana Harbor, Ind., within the switching limits of Chicago, contends that the difference in rates in favor of Chicago should be at least 10 cents, as it now is in connection with the domestic rates. The domestic rates are 65 cents from Chicago and 75 cents from Pittsburgh, minimum weight 60,000 pounds.

The rate from Pittsburgh to the Orient via New York was stated by respondents to be approximately 122.6 cents, made up of 11 cents to New York and 111.6 cents for the steamship service beyond. These figures represent rates in effect at the time of the hearing and are not based upon rates which may become effective as a result of our decision in the *Eastern Export Iron and Steel Case*, 43 I. C. C., 5. The ocean rate from the Pacific coast ports is said to be about 90 cents, which, added to the proposed rate of 45 cents from Pittsburgh to the Pacific coast ports, would result in a total through charge of 135 cents. While this rate is about 12.4 cents higher than the rate from Pittsburgh via New York, the quicker service, reduced war risks, and lower insurance rates which can be had if the traffic moves via the Pacific coast ports tend to equalize the rate disadvantage. Chicago, with the proposed rate of 40 cents, would get a through rate to the Orient via the Pacific coast ports of 130 cents, or 5 cents less than Pittsburgh would pay via the Pacific coast ports. The through rate from Chicago to the Orient via New York was shown to be 132.6 cents, made up of 21 cents to New York and 111.6 cents beyond, based also on the rates in effect at the time of the hearing. It is pointed out by respondents that, were it not for their efforts to meet competition, Chicago, if it desired to ship via New York, would have to pay a differential of 10 cents over Pittsburgh.

Respondents contended that the spread between the Chicago and Pittsburgh rates has never been maintained as a differential, but that it is merely an incidental difference in rates. Their evidence shows that the proposed increased rate from Pittsburgh is as high as it can well be in view of the rates maintained by the lines from Pittsburgh via New York; and that the proposed rate from Chicago is as low as is required to meet competitive conditions. Having established these facts they would be justified in establishing the changed spread proposed. The proposed rates are much less than the rates on domestic traffic and no question is raised respecting their intrinsic reasonableness.

On traffic to Australia the proposed rate on most articles of iron and steel manufacture from Pittsburgh to the Pacific coast ports is 60 cents, as compared with 45 cents on traffic to the Orient. The United States Steel Products Company and its subsidiaries protest against a difference in rates dependent upon the destination of the traffic. Respondents explain that there are very few steamships plying between the Pacific coast ports and Australia and that practically all the traffic to that continent moves via New York. In other words, respondents in connection with ocean steamship lines from Pacific coast ports have not the service to offer and do not seek to meet the rate in effect from Pittsburgh via New York. The maintenance of different export rates to the same port dependent upon the foreign destination of the traffic, under such circumstances as here appear, is not unlawful. *Erickson Co. v. C., M. & St. P. Ry. Co.*, 29 I. C. C., 414.

The increased rates from central freight association and trunk line territories to the Atlantic ports, authorized in the *Eastern Export Iron and Steel Case*, 43 I. C. C., 5, do not affect the issues in this case.

Upon consideration of all the facts shown of record we are of opinion and find that the proposed increased rates have been justified. Our order of suspension will accordingly be vacated.

43 I. C. C.

No. 8618.
WELLS LUMBER COMPANY
v.
GULF & SHIP ISLAND RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
484, 542, 601, 2060, AND 3965.

Submitted April 27, 1916. Decided February 6, 1917.

1. Rate applicable on yellow-pine lumber from Lumberton, Miss., to Deferiet, N. Y., not shown to have been unreasonable. Shipments found to have been overcharged and reparation awarded.
2. Authority to continue rates on yellow-pine lumber from Lumberton to Deferiet lower than the rates contemporaneously applicable on like traffic from and to intermediate points, denied.

Vincent L. Boisaubin for complainant.

R. Walton Moore and *Willis H. Fowle* for Gulf & Ship Island Railroad Company; New Orleans & Northeastern Railroad Company; Alabama Great Southern Railroad Company; and Cincinnati, New Orleans & Texas Pacific Railway Company.

C. P. Stewart for Cleveland, Cincinnati, Chicago & St. Louis Railway Company and New York Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of yellow-pine lumber, with its principal office at St. Louis, Mo. By complaint, filed January 24, 1914, it alleges that the combination rate of 40 cents per 100 pounds charged by defendants on two carloads of yellow-pine lumber shipped from Lumberton, Miss., to Deferiet, N. Y., January 14, 1913, was unreasonable to the extent that it exceeded 33 cents per 100 pounds. Reparation is asked.

Lumberton is located on the Gulf & Ship Island and the New Orleans & Northeastern railroads, hereinafter called the Gulf & Ship Island and the Northeastern, respectively. Complainant's plant at Lumberton is served only by the Gulf & Ship Island. One of the shipments was routed "via Carthage, N. Y.-Hburg. N. O. & N. E. % N. Y. C. & H. R.," and the other "Hburg, N. O. & N. E.-Big Four & N. Y. C. & H. R.," and the Gulf & Ship Island's bills of lading were used. The shipments moved Gulf & Ship Island to Hattiesburg, Miss.; Northeastern to Meridian, Miss.; Alabama Great South-

ern Railroad and Cincinnati, New Orleans & Texas Pacific Railway to Cincinnati, Ohio; Cleveland, Cincinnati, Chicago & St. Louis and Lake Shore & Michigan Southern railways to Buffalo; New York Central Railroad to destination. They aggregated 114,200 pounds, and charges were collected thereon in the sum of \$456.80. The rate legally applicable was a joint rate of 34.1 cents per 100 pounds, so that the shipments were overcharged \$67.38.

When the shipments moved a rate of 33 cents per 100 pounds applied on yellow-pine lumber in carloads from Lumberton to Deferiet by way of Jackson, Miss., in connection with the Illinois Central Railroad. Complainant states that prior to the movement of the shipments the Gulf & Ship Island and the Illinois Central Railroad disagreed as to divisions of the rate applicable by way of the Jackson route; that complainant was notified by the Gulf & Ship Island prior to the movement of the shipments that the Illinois Central would not accept from the Gulf & Ship Island at Jackson shipments of lumber destined to points in the state of New York; and that the routing of the shipments in question resulted from the notice served on complainant by the Gulf & Ship Island. But the 33-cent rate applied by way of Jackson when the shipments moved, and this rate and route were available to complainant. A 33-cent rate also applied from Lumberton to Deferiet in connection with the Northeastern. As the originating carrier, the Northeastern absorbed the switching charge of the Gulf & Ship Island at Lumberton. Beyond Hattiesburg this route is the same as the route over which the shipments moved.

Complainant stated that one of the shipments, the intermediate routing of which beyond Hattiesburg was not specific, should have moved by way of the Virginia cities at a rate of 33 cents per 100 pounds. But the 33-cent rate did not apply by way of the Virginia cities.

As shown, the 33-cent rate applied over practically the same route as that traversed by the shipments and over another route substantially as expeditious. No other evidence was offered with respect to the reasonableness of the rate legally applicable on the shipments. There was no obligation on the Gulf & Ship Island to deliver these shipments to its competitor, the Northeastern, at Lumberton. *McLean Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 349. The complainant is now in process of liquidation, and is making no shipments from Lumberton.

We find that the rate of 34.1 cents per 100 pounds legally applicable on the shipments in question is not shown to have been unreasonable, but that the charges collected were illegal to the extent that they exceeded the charges that would have accrued at the rate

of 34.1 cents per 100 pounds legally applicable. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate legally applicable; and that it is entitled to reparation in the sum of \$67.38 with interest.

Those portions of Gulf & Ship Island Railroad Fourth Section Application No. 484, of Alabama Great Southern Railroad Application No. 542, of New Orleans & Northeastern Railroad Application No. 601, of J. F. Tucker, agent, Application No. 2060, and of Cincinnati, New Orleans & Texas Pacific Railway Application No. 3965; wherein authority is sought to continue rates on yellow-pine lumber from Lumberton to Deferiet lower than the rates contemporaneously maintained on yellow-pine lumber from and to intermediate points, were heard with the complaint. No effort was made by the carriers to justify the departures from the provisions of the fourth section, and the applications for relief that were heard will be denied to the extent that they are here involved.

Appropriate orders will be entered.

43 L. C. C.

No. 8391.
TORREY CEDAR COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted February 1, 1916. Decided February 6, 1917.

1. Charges collected by defendants on a carload of cedar posts from Tigerton, Wis., to Letcher, S. Dak., found to have been illegal to the extent that they exceeded those which would have accrued at the rate of 30.5 cents per 100 pounds applicable over the route of movement.
2. The shipment found to have been misrouted by the Chicago & North Western Railway Company.
3. Reparation awarded against all defendants for the amount of the illegal charges collected and against the Chicago & North Western Railway for the amount complainant was damaged by the misrouting.

Henry W. Anthes for complainant.

R. H. Widdicombe for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at Clintonville, Wis. By complaint, filed October 4, 1915, it alleges that the rate charged by defendants for the transportation of a carload of cedar posts shipped from Tigerton, Wis., to Letcher, S. Dak., on May 27, 1915, was unreasonable. Reparation is asked and the establishment of reasonable joint rates on cedar fence posts between points on the Chicago & North Western Railway, hereinafter called the North Western, and points on the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee. Rates are stated herein in cents per 100 pounds.

Tigerton is a local point on the North Western; Letcher is a local point on the Milwaukee. The shipment weighed 34,700 pounds and was delivered by complainant to the North Western at Tigerton, routed by way of the Milwaukee. It moved: North Western to Marshfield, Wis.; Chicago, St. Paul, Minneapolis & Omaha Railway to Pipestone, Minn.; Milwaukee beyond. Charges were collected in the sum of \$108.90. These charges were paid by the consignee at Letcher and the invoice price of the posts, less the freight charges, was remitted by consignee to complainant on July 13, 1915. No

joint rate applied. A combination rate of 30½ cents applied over the route of movement: 16 cents to Pipestone and 14½ cents beyond. The correct charges were \$105.84, so that the shipment was overcharged \$3.06. Contemporaneously a combination rate of 30 cents applied from Tigerton to Letcher by way of the North Western to Wausau, Wis., and the Milwaukee thence to destination. An equal combination also applied by way of the North Western and the Chicago, St. Paul, Minneapolis & Omaha Railway to St. Paul or Minnesota Transfer, Minn., and the Milwaukee beyond. The routing specified by the shipper was complete, and it was the duty of the North Western to deliver the shipment to the Milwaukee by a direct connection, over which route the 30-cent rate applied.

On June 1, 1915, joint rates on lumber and articles taking the same rates, including cedar posts, were established from Tigerton and other points on the North Western in Wisconsin, Minnesota, and the upper peninsula of Michigan to Letcher and to other stations on the Milwaukee west of the Mississippi River, which rates are satisfactory to complainant. It was provided that these rates would apply by way of the first junction point between the North Western and the Milwaukee, which would exclude the Chicago, St. Paul, Minneapolis & Omaha Railway from participation in traffic thereunder. The joint rate established from Tigerton to Letcher was 24 cents, and it is upon that basis that complainant seeks reparation. Defendants contend that the joint rates were established by mistake and in tariffs filed to become effective August 15, 1915, it was proposed to cancel them and leave the combinations to apply. The proposed cancellations were suspended, and in *Lumber to C., M. & St. P. Ry. Stations*, 38 I. C. C., 587, they were found not justified and were required to be withdrawn. In the report in that case we said:

It appears that joint rates equal in amount to those which the suspended schedule is designed to cancel are now and for many years have been applicable from the same points on the North Western to points west of the Mississippi River on lines other than the Milwaukee, and also from points in the same producing territory on lines other than the North Western to the same points on the Milwaukee. Respondents admitted that if they had decided to publish joint through rates those now in effect by mistake would have been the rates adopted, as they are constructed on the "established basis."

We find that the Chicago & North Western Railway Company misrouted the shipment; that the rate applicable over the route the shipment should have moved was unreasonable to the extent that it exceeded 24 cents per 100 pounds; that complainant made the shipment as described and was damaged by the misrouting to the extent of the difference between the charges that would have accrued

at the rate applicable over the route of movement and the charges that would have accrued at the rate of 24 cents per 100 pounds; and that it is entitled to reparation from the Chicago & North Western Railway Company in the sum of \$22.56, with interest. Also to reparation from all of the defendants in the sum of \$3.06, with interest, the amount of the above-mentioned overcharge. In view of the decision in *Lumber to C, M. & St. P. Ry. Stations, supra*, no order for the future is deemed necessary.

An order will be entered in accordance with our findings herein.

No. 8790.

SIGMUND BERLINER

v.

CHICAGO GREAT WESTERN RAILROAD COMPANY
ET AL.

Submitted July 13, 1916. Decided December 12, 1916.

Charges collected on a carload of granite from Hardwick, Vt., to Forest Park, Ill., found to have been illegal. Reparation awarded.

A. J. Killian for complainant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in monuments, granite, marble, and stone at Forest Park, Ill. By complaint, filed March 31, 1916, he alleges that the charges collected by defendants on a carload of granite, shipped from Hardwick, Vt., to Forest Park, in August, 1915, were illegal. Reparation is asked.

The shipment weighing 25,800 pounds moved over defendants' lines. Charges were collected in the sum of \$69.90, based on the sixth-class rate of 23.3 cents per 100 pounds, minimum 30,000 pounds, applicable to granite not limited as to value. A commodity rate of 19 cents per 100 pounds, minimum 30,000 pounds, contemporaneously applied from and to the points in question over the route of movement on granite, the actual value of which was not in excess of \$2 per 100 pounds. The granite in issue was worth not in excess of \$2 per 100 pounds, and a notation to that effect was inserted in the bill of lading. The shipment was overcharged \$12.90.

3 I. C. C.

In connection with their rates on stone, granite, and marble, based on limited values, defendants' rule requires that the values be noted in the bills of lading at points of origin. Complainant urges that this rule is unreasonable when so applied, that correction can not be made at destinations when such notations are inadvertently omitted, and the invoice values of the shipments are such as to entitle them to rates lower than the rates applicable on shipments of greater value. It was also contended that the dunnage rule relative to stone, marble, and granite, which requires that notation should be made on the bill of lading showing the amount of dunnage used, was unreasonable in that by inadvertence such notation might be omitted from the bill of lading and correction at destination is not provided for. These contentions can not be considered, however, on the present record because the complaint does not put the question of the reasonableness of these rules in issue.

We find that the charges collected were illegal to the extent that they exceeded charges that would have accrued at the rate of 19 cents per 100 pounds, subject to a minimum weight of 30,000 pounds, which rate we find was legally applicable. We further find that complainant made the shipment as described and paid and bore the charges thereon herein found to have been illegal; that he has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate legally applicable, and that he is entitled to reparation in the sum of \$12.90, with interest, for which amount an order of reparation will be entered.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 867.

PEDDLER CAR MINIMUM.

Submitted November 11, 1916. Decided February 12, 1917.

Proposed changes in the rules governing shipments of packing-house products, fresh meats, and other articles, transported in peddler cars in central freight association territory, found not to have been justified.

Ernest L. Ballard, J. B. McCorkle, J. W. Clark, and Fred H. Behring for respondents.

R. D. Rynder for Swift & Company.

H. K. Crafts for Armour & Company.

Luther M. Walter and John S. Burchmore for Wilson & Company and Morris & Company.

Tolles, Hogsett, Ginn & Morley for Cleveland Provision Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

The tariffs here under suspension, published to become effective between June 20 and July 20, 1916, both inclusive, and suspended to April 18, 1917, propose increased minimum charges for the transportation in central freight association territory of commodities in peddler cars. The protestants operate packing houses at Chicago, Ill., St. Louis, Mo., Indianapolis, Ind., and Cleveland, Ohio.

This peddler-car service is similar to that in western trunk line territory as described in *Rules Governing Shipments of Freight in Peddler Cars*, 32 I. C. C., 428, but differs in the method used for computing the minimum charge. The following rule is typical:

Rule 4. The minimum aggregate charge per car to be on basis of minimum weight of 20,000 pounds at the dressed beef carload rate, as per tariffs lawfully on file with the Interstate Commerce Commission, as to interstate traffic and with other railroad commissions as to traffic subject to their jurisdiction to the furthestmost destination of any consignment in the car. In case the charges on the several consignments as to respective destinations at the less-than-carload rates do not aggregate the above minimum, the difference to make the required minimum charge must be added.

By the tariffs under suspension respondents propose to substitute 21,000 for 20,000 pounds.

In *Fresh Meat and Packing-House Product Rates*, 38 I. C. C., 665, at 668, we found that the minimum weight there proposed of 21,000

pounds, an increase from 20,000 pounds, had been justified for application in this territory to carload shipments of fresh meat, including dressed beef. This finding, and the fact that for years the minimum charge for peddler-car service in the same territory had been computed by applying the dressed beef carload rate to the carload minimum on that commodity, were urged by respondents in justification of the proposed change in rule. Two of the carriers in terms base their charges on the dressed beef carload minimum and, as a result of our finding, *supra*, now collect minimum peddler-car charges on the basis of 21,000 pounds.

Respondents also claim that the peddler-car service exceeds that rendered for carload shipments of fresh meat, and that the charges for the former should at least equal the receipts from a minimum carload of the latter. They further contend that the peddler-car shipper gets more service than the less-than-carload shipper. Peddler cars are not loaded over 14,000 pounds on the average. The smaller packing houses can not load even to that average. The load decreases as the haul progresses and usually is very light near the end of the haul. The weight carried is thus less than in carload shipments, although the car used weighs the same in either case. Peddler cars, being loaded in station order, are stopped for partial unloading at the stations as reached, a service not needed in carload shipments.

Peddler-car traffic pays the less-than-carload rates in all cases and an excess over such rates in some cases. It is true that the peddler-car shipper, unlike the less-than-carload shipper, has exclusive use of the car. Peddler cars are cleaned, precooled, and loaded by the shipper, move on stated days, and contain large quantities assembled in one car for delivery along the same route. It is apparent that the cost of service, other than for line haul, to be borne by the carrier is less than it would be if the same commodities were offered as less-than-carload shipments. These commodities could not be iced satisfactorily in less-than-carload movement. There is refrigeration of peddler cars for which the shipper pays, the charge when ice is furnished by the carriers at their regular icing stations being \$2.50 per ton, while at other points the local charges apply and in instances exceed \$5 per ton. The loss and damage claims filed by one shipper amounted to 2 per cent of the total freight charges on its peddler-car traffic. The special services incident to this traffic do not differ from those described by us in *Rules Governing Shipments of Freight in Peddler Cars*, *supra*, where we said:

It appears that the service rendered by the respondents in connection with peddler cars is generally not greater, and in some instances less than the

service which they render in connection with less-than-carload traffic handled through their freight houses; that for the peddler-car service the user pays the regular less-than-carload rates, guarantees the carrier a minimum per car earning, saves the carrier the expense of refrigeration, reduces loss and damage claims, and gives to the carrier a volume of traffic which could not be satisfactorily transported in its own equipment.

During the month of July, 1916, the Michigan Central handled 73 peddler cars from the Union Stock Yards in Chicago to points on its line. The loading of these cars was 17,199 pounds on the average, and in the case of 37 was not sufficient at the less-than-carload rates applicable under the rule quoted to make the charges equal the dressed beef carload rate on the basis of a 20,000-pound minimum; so on these 37 cars additional charges, called "penalty" charges, had to be assessed in order to yield to the carrier the minimum revenue required under its tariff. If the minimum here proposed had been applied to the 73 cars, 2 additional cars would have been subject to penalty charges, and the penalties on the 37 cars would have been increased in amounts ranging from \$1.68 to \$3.15 per car.

The Pennsylvania Company introduced an exhibit showing movement of 28 peddler cars during the same month and from the same point of origin to destinations on its lines. From this exhibit it may be deduced that the average haul was 303 miles, average load 13,836 pounds, average number of stops 7.4, average charge per car \$50.62, and average per car-mile revenue 16.7 cents. This is more typical of the average loading than the showing made by the Michigan Central. Of the 28 cars shown in this exhibit, 17 were subject to penalties.

The protestants take representative movements for distances ranging from 129 to 549 miles, and, by applying thereto the minimum charge under the present rule, show car-mile earnings ranging from 13.15 cents for the longer distances to 26.05 cents for the shortest. These are compared with earnings in other territories. Thus, earnings for a movement of 174 miles are 18.06 cents per car-mile. On peddler-car movement from East St. Louis, Ill., into southern classification territory for approximately the same distance, under rates applied by the Louisville & Nashville Railroad Company, the minimum car-mile earnings are 18 cents. So, also, for a movement of 294 miles in central freight association territory application of the present tariff minimum yields car-mile earnings of 14.29 cents. For a similar distance in southern classification territory the minimum earnings are 11.35 cents. The minima and rates provided in trunk line territory result in charges less than those here sought to be increased. In refusing to permit an increase in peddler-car charges

in *Rules Governing Shipments of Freight in Peddler Cars, supra*, we said, at page 431:

* * * under the proposed increased minimum loading at fourth-class rates the average car-mile earnings from peddler cars on all the routes selected, including one haul of 613 miles, would be approximately 10.1 cents, and that on the same basis the earnings on the existing minimum loading requirement would be 8.4 cents; also that for hauls ranging from 213 to 388 miles the average car-mile earnings under the proposed increased minimum loading would be approximately 10.5 cents, as compared with average earnings of 11.94 cents per car-mile on the total less-than-carload traffic for the year ended June 30, 1913. * * * Selecting a large number of cars which were loaded below the minimum, it is shown that the revenue yielded the respondents was on the average 17.55 cents per car-mile for an average haul of 202 miles.

A witness for the protestants, familiar with the peddler-car traffic throughout the United States, and referring to the evidence set out in part above as to charges in different territories, testified that, in his opinion, the present peddler-car earnings are greater in central freight association territory than in any other territory. No effort to refute this testimony was made. The charges here sought to be increased have heretofore been increased by change in method of computation as well as by the 5 per cent increase following our report in *The Five Per Cent Case*, 32 I. C. C., 325, and are now higher than when the service was established.

The proposed change in the rule is not an increase of the minimum weight, in the usual meaning of that term, but a change in one of the two factors used in computing the minimum charge for peddler-car service, the other factor being the carload rate on dressed beef, regardless of whether or not any dressed beef forms part of the content. The effect of this change in basis would be to increase in many instances the aggregate of the charges, at the less-than-carload rates applicable to the various commodities constituting that content, by the amount of penalty charge added to complete the minimum, and thus to increase the rates applicable on the content. This record furnishes no sufficient justification for such increased rates and an order requiring the cancellation of the suspended tariffs will be entered.

COMMISSIONERS HARLAN and DANIELS dissent.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 849.
DAVIES SPUR, WASH., EXPRESS RATES.

Submitted December 26, 1916. Decided February 13, 1917.

Cancellation of joint commodity express rates on fruits and vegetables, in carloads, from certain points in the state of Washington to points in other states, through Spokane, Wash., found not justified.

John F. Finerty for respondents.

Charles J. Webb for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By certain schedules contained in supplements Nos. 13 and 14 to agent Airy's tariff I. C. C. No. C-1183, filed to take effect June 1 and June 2, 1916, respectively, respondents proposed to cancel their present joint commodity express rates on fruits and vegetables, in carloads, from points in the state of Washington in subblock No. 208-C, as shown in agent Airy's tariff I. C. C. No. A-3, to points in other states through Spokane, Wash., leaving no rates in effect by way of Spokane. Upon protest filed by the Spokane Fruit Growers Company, of Spokane, the schedules were suspended until September 29, 1916, and later until March 29, 1917. Apparently protestant is interested only in rates on strawberries from Davies Spur, Wash., which is about 11 miles east of Spokane.

The exact points of origin located in subblock No. 208-C are not shown in agent Airy's tariff I. C. C. No. C-1183, but consistent with the requirements of rule 4 (d) of Tariff Circular No. 19-A the rates therein are governed by and apply in connection with F. G. Airy's joint directory of express stations I. C. C. No. A-3, supplements thereto and reissues thereof. The only stations named in the joint directory of express stations in subblock No. 208-C are Colbert, Dean, Deer Park, Denison, and Milan, Wash. The Great Northern Express Company, hereinafter called the respondent, serves Davies Spur, and publishes a local directory of its nonagency stations which shows Davies Spur as being in subblock No. 208-C, but the tariff in which the suspended items are published does not refer to the local issue of the respondent, nor is there any reference in Airy's tariff I. C. C. No. C-1183 which could be interpreted to make the rates therein apply from Davies Spur. Rule 4 (h) of Tariff Circular 19-A provides:

An express company or an agent may publish, under I. C. C. number, post, and file a tariff publication containing the rules and regulations which are to

govern certain rate schedules, and such publication may be made a part of such rate schedules by the specific reference "Governed by rules and regulations shown in ——— I. C. C. No. ———."

There were and are no express rates legally in effect from Davies Spur. However, as it was undoubtedly the intention of respondent to establish rates from Davies Spur, and as hearing was had and briefs filed under assumption by the interested parties that such rates were in effect, we have considered the record as made and in addition to passing upon the rates in issue, will state our views with respect to the Davies Spur situation.

At the hearing respondent stated that the effect of the suspended schedules was broader than was intended and that while it did not desire to publish express rates applying from Davies Spur by way of Spokane, it was not its purpose to eliminate rates by way of Spokane from other stations in subblock No. 208-C, except to points served by it and by one or more additional express companies.

With respect to competitive destinations the testimony relates mainly to Butte, Mont. Respondent operates over the Great Northern Railway, and Davies Spur is one of its local stations. Butte is served by several express companies, including the respondent, and also the Northern Express Company, which operates over the Northern Pacific Railway. The express rate on fruit and vegetables, in carloads, from stations in subblock No. 208-C and also from Spokane to Butte is \$1.25 per 100 pounds. A shipment moving east over respondent's route from Davies Spur to Butte would travel 717 miles; a shipment moving west from Davies Spur to Spokane and thence by way of the Northern Express Company to Butte would travel 389 miles.

Respondent's objection to transporting shipments westbound from Davies Spur is based on difficulties of operation at that point. The proposed cancellation of westbound rates from subblock No. 208-C to competitive points generally is the result of respondent's desire to preserve to itself the long haul on traffic which it originates.

The only sidetrack at Davies Spur is a short spur upon which is located protestant's packing warehouse and loading platform. This spur extends northwest from the main line and the west end of it does not connect with the main line. When express cars are picked up at Davies Spur for westbound movement to Spokane it is necessary to couple them ahead of the engine and the delay involved to passenger trains is, according to respondent, from 10 to 12 minutes. Furthermore, it was testified that the sidetrack at Davies Spur is constructed of rails which are too light to bear the weight of some of the large passenger locomotives used in that territory. Respondent stated that express service westbound to noncompetitive points

would be available to protestant from Morse, Wash., a station about 1½ miles west of Davies Spur. At present, however, there are no express rates applicable from Morse.

Respondent urges that while the distance over its route from points in subblock No. 208-C to Butte is much greater than the distance by way of Spokane and the Northern Express, the actual difference in time in favor of the shorter route is not sufficient to justify a requirement that it surrender to the Northern Express Company at Spokane traffic which it originates at points in subblock No. 208-C and which traffic it is prepared to carry to destination. There is only one eastbound express train daily through points in subblock No. 208-C to Butte over the long route, and respondent is prepared to handle express shipments from Davies Spur in that train. This train passes Davies Spur about noon and a car moved therein would arrive in Butte the following day about 4.30 p. m. The Northern Express Company handles express on a train leaving Spokane about 8 a. m. daily and arriving at Butte about 10 p. m. the same day, and on another train leaving Spokane about 10 p. m. daily and arriving at Butte about 1 p. m. the following day. There are westbound freight and passenger trains to Spokane that pass through Davies Spur between 4 p. m. and 6 p. m. Respondent testified that by reason of the transfer arrangements of the railroad companies cars moved to Spokane by these trains could not be switched to the Northern Express Company until after midnight, and would therefore have to wait for the morning train. Protestant states that it is impracticable to pick strawberries and load them before noon but that they may be conveniently loaded in time to move in the Great Northern's afternoon trains to Spokane. Assuming that a car of berries is ready for shipment from Davies Spur at 4 p. m. Monday, by way of respondent's long route it would move from Davies Spur at noon Tuesday and arrive at Butte at 4.30 p. m. Wednesday; by way of the short route it would arrive at Spokane Monday evening and if it could not be transferred to the Northern Express Company in time to connect with the evening train, reaching Butte at 1 p. m. Tuesday, it would move out in the train leaving Spokane Tuesday morning and arrive at Butte about 10.30 p. m. the same day.

The strawberry crop in the territory contiguous to Davies Spur amounted to about 32 carloads in 1915, about 34 carloads in 1916, and it is estimated that in 1917 it will be about 85 carloads. Strawberries are extremely perishable, and in shipping to Butte protestant is particularly anxious to avail itself of the route by way of Spokane and the Northern Express Company because of the more expeditious service over that route. It also desires to sell in markets on the Northern Pacific between Spokane and Butte which can not take full

carloads of berries but which may be served by stopping through cars for partial unloading, at an additional charge of \$5 per stop.

Protestant does not insist upon passenger train service for the movement from Davies Spur to Spokane of its express cars destined to Butte over the short route, but would be satisfied with freight train service for that portion of the haul. During the 1914 season and at the beginning of the 1915 season carload shipments of strawberries in express cars were handled in freight trains by the Great Northern Railway from Davies Spur to Spokane, for transportation by the Northern Express Company beyond, at a charge to Spokane of \$21 per car. Since that time, however, the Great Northern Railway has increased its charge for that service to \$40 per car, which protestant states is prohibitive, and has refused to handle carload shipments of strawberries in express cars from Davies Spur to competitive points such as Butte by way of Spokane. Consequently, in 1915 and 1916 it was necessary for protestant to haul numerous carloads of berries by wagon or automobile to the Northern Express Company at Spokane.

Protestant objects to shipping from Morse because of the additional wagon haul of approximately 1½ miles and the necessity of providing a packing warehouse and loading platform there for the handling of its shipments. This would entail at least the partial abandonment of its loading facilities at Davies Spur, which cost about \$2,800.

In *In re Express Rates, Practices, Accounts, and Revenues*, 24 I. C. C., 380, 443, we said:

The express carriers must unite in direct through routes reaching all cities and towns accessible to each other by the shortest route measured in time. The Commission will leave this matter in the hands of the carriers for the present, but will undertake to see that this principle is recognized in the routing of express traffic.

The element of time is the controlling factor that makes express service valuable, and it is of especial importance in connection with the transportation of such perishable commodities as fresh fruits and vegetables.

We find that respondents have not justified the proposed cancellation of rates by way of Spokane. We are also of opinion that Davies Spur should be accorded express rates on strawberries, in carloads, to interstate destinations not higher than the rates contemporaneously maintained on similar traffic from other express stations in subblock No. 208-C and applicable over the same routes. If this suggestion is not promptly complied with protestant may bring the matter to our attention by formal complaint.

An order will be entered requiring the cancellation of the suspended schedules.

No. 8269.

MILLER-JACKSON GRAIN COMPANY

v.

PONTIAC, OXFORD & NORTHERN RAILROAD COMPANY
ET AL.

Submitted November 18, 1915. Decided February 13, 1917.

Allegation that demurrage charges at Tampa, Fla., on a carload of hay shipped from Dryden, Mich., were unlawful not sustained. Complaint dismissed.

Arthur G. Webb for complainant.

F. M. Hardin for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the grain and hay business at Tampa, Fla. By complaint, filed August 26, 1915, it alleges that demurrage charges collected by the Atlantic Coast Line Railroad Company, hereinafter called the Coast Line, on a carload of hay shipped September 27, 1913, from Dryden, Mich., to Tampa, were unjust and unreasonable. Reparation is asked.

The shipment was billed to "Order of D. T. Utley, Tampa, Fla., notify Miller-Jackson Grain Company." It moved: Pontiac, Oxford & Northern Railroad, Grand Trunk Western Railway, Detroit & Toledo Shore Line Railroad, Cincinnati, Hamilton & Dayton Railway, and Louisville & Nashville Railroad to Montgomery, Ala.; Coast Line thence to Tampa. "Dryden, Mich.," and "Order of D. T. Utley" were not shown on the waybill on which the shipment was delivered to the Coast Line at Montgomery. The Coast Line omitted "Miller-" from its waybill. The shipment reached Tampa October 13, 1913, and the Coast Line directed a notice of its arrival to the "Jackson Grain Company." This notice promptly reached the complainant, for whom the shipment was intended. Complainant thereupon requested the Coast Line to furnish the name of the shipper and the point at which the shipment originated or advise if the shipment had been transferred en route. The Coast Line was unable to furnish this information at that time. Shortly after November 30, 1913, after correspondence with its connections, it finally advised complainant as to the point of origin. Complainant thereupon paid the freight charges, plus \$45 demurrage assessed at Tampa, and accepted the shipment.

Complainant's case is based on the fact that the original notice to it by the Coast Line of arrival of the shipment was not in full compliance with the Coast Line's demurrage regulations in force at the time, which required that the point of origin be shown, and that this information was not furnished until after the demurrage had accrued.

The record shows that on October 7, 1913, several days before the car arrived at Tampa, the First National Bank of Tampa received a draft covering the value of the shipment involved, drawn by the consignor on complainant, together with the invoice and bill of lading, the latter showing the name of consignor and point of origin of the shipment. An employee of the bank testified that in the ordinary course of business notices of drafts are invariably sent out on the day drafts are received. He could, however, give no definite testimony concerning the draft involved in this transaction.

It appears that during the months of October and November, 1913, the hay market at Tampa was overstocked, and that during this period complainant allowed numerous carloads of hay to remain on the Coast Line's tracks at Tampa for from 14 to 37 days, in instances where proper notice of arrival of such cars had been furnished.

While the original notice of arrival of the shipment furnished complainant by the Coast Line did not fully comply with that line's demurrage rules, it does not clearly appear that the defect in the notice was the proximate cause of the delay in accepting the shipment. An order dismissing the complaint will be entered.

43 I. C. C.

No. 8316.

W. F. RUDIGER, ASSIGNEE OF H. L. GRIFFIN COMPANY,
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted November 29, 1915. Decided February 6, 1917.

Carload shipment of bananas from New Orleans, La., to Pocatello, Idaho,
found to have been misrouted and reparation awarded.

W. F. Rudiger for complainant.

James A. Foley for Illinois Central Railroad Company and St. Louis & San Francisco Railroad Company and its receivers.

D. R. Gray for Union Pacific Railroad Company, Oregon Short Line Railroad Company, and Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is the assignee of H. L. Griffin Company, a corporation formerly engaged in the fruit and produce business at Ogden, Utah. By complaint, filed August 21, 1915, he alleges that the charges collected by defendants for the transportation of a carload of bananas shipped from New Orleans, La., to Pocatello, Idaho, May 16, 1911, were unreasonable and unjustly discriminatory. Reparation is asked. The claim was first presented to the Commission informally October 1, 1912.

The shipment weighed 22,050 pounds. It was delivered to the Illinois Central Railroad routed: Illinois Central Railroad to Memphis, Tenn.; St. Louis & San Francisco Railroad to Paola, Kans.; Missouri Pacific Railway to Pueblo, Colo.; Denver & Rio Grande Railroad to Denver, Colo.; Union Pacific Railroad to Granger, Wyo.; and Oregon Short Line Railroad thence to destination, with a notation on the bill of lading that the rate should be \$1.25 per 100 pounds. It moved as routed. No joint through rate was in effect over this route, and charges were collected in the sum of \$392.49 at a combination rate of \$1.78 per 100 pounds: 63 cents from New Orleans to Missouri River points, and \$1.15 thence to destination. A joint through rate of \$1.25 per 100 pounds contemporaneously applied over the Illinois Central Railroad and other lines through Kansas City, Mo., Council Bluffs, Iowa, or Junction City, Kans., in connection with the Union Pacific Railroad; through

Kansas City, Kans., in connection with the St. Joseph & Grand Island Railway to Grand Island, Nebr., and the Union Pacific beyond; and also through Kansas City, Kans., or Council Bluffs, Iowa, in connection with the Chicago, Rock Island & Pacific Railway to Pullman, Colo., and the Union Pacific beyond. On October 12, 1911, the \$1.25 rate was established over the route the shipment moved.

In previous cases and in conference rulings we have held that when both the rate and route are inserted by the shipper in the bill of lading and they do not coincide, it is the duty of the initial carrier's agent to ascertain from the shipper before forwarding the shipment whether he desires that the instructions as to the rate or the route shall govern. Following these rulings, we find upon the facts of record in this case that the Illinois Central Railroad Company misrouted the shipment in forwarding it by way of a route over which there applied a higher rate than that designated in the bill of lading and higher than that in effect via other available and reasonable routes, without first obtaining from the shipper instructions to that effect. We further find that H. L. Griffin Company made the shipment as described and paid and bore the charges thereon; that it was damaged by the misrouting to the extent of the difference between the charges collected and the charges that would have accrued if the shipment had moved by way of the lines over which the rate of \$1.25 per 100 pounds applied; and that complainant, W. F. Rudiger, assignee of H. L. Griffin Company, is entitled to reparation from the Illinois Central Railroad Company in the sum of \$116.86, with interest.

An appropriate order will be entered.

43 I. C. C.

No. 6749.
CRUIKSHANK & ROBINSON
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted May 11, 1916. Decided February 6, 1917.

On rehearing charges collected on shipments of hay in carloads from points in Canada to Norfolk, Va., found to have been unreasonable and reparation awarded.

Henry G. Binns for complainants.

Frederick L. Ballard for Pennsylvania Railroad Company; New York, Philadelphia & Norfolk Railroad Company; and Philadelphia, Baltimore & Washington Railroad Company.

S. S. Perry for New York, New Haven & Hartford Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION :

This case was originally decided April 12, 1915, unreported, and a supplemental report was issued July 7, 1915. By complaint, filed March 12, 1914, complainants alleged that the rates charged by defendants on 255 carloads of hay, in bales, shipped from certain points in Canada to Norfolk, Va., were unreasonable to the extent of 3 cents per 100 pounds. Reparation was asked. In our supplemental report we found that complainant was entitled to reparation. Subsequently, on petition of the New York, New Haven & Hartford Railroad, hereinafter called the New Haven, an order was entered reopening the case. Rehearing has since been had and the case is now before us on the whole record.

The shipments moved during February, March, and April, 1912, from Woodstock, Canterbury, Debec Junction, Millville, Bath, Cahill, Newburg Junction, Pinder Siding, Upper Kent, Brunswick, Upper Keswick, and Burnside, Canada. The complaint was filed within two years of the time the shipments were delivered. There were no joint rates in effect, and charges were collected on the basis of rates of 24 cents or 25½ cents per 100 pounds, according to the point of origin, to Harlem River, N. Y., a station on the New Haven within the lighterage limits of New York harbor; plus a charge of 8 cents per 100 pounds for floatage from Harlem River to Greenville, N. J., by the New Haven; and a rate of 12 cents per

100 pounds thence to Norfolk, by way of the Pennsylvania Railroad, hereinafter called the Pennsylvania, and its connections. All carload freight arriving at Harlem River over the New Haven, destined to points on or by way of the Pennsylvania, must be floated from Harlem River to Greenville or Jersey City, N. J. Complainants contend that the 3-cent floatage charge imposed should have been included in one or the other of the rate factors.

The rates from points of origin to Harlem River and the rate from New York, lighterage delivery, to Norfolk are not attacked as unreasonable. Complainants' claim is that because the rate from Greenville is the same as the rate from various other points in New York harbor within the lighterage limits, and because Harlem River is within these limits, that it was unreasonable to add to the rates from points of origin to Harlem River, and from New York, lighterage delivery, to Norfolk, the lighterage or floatage charge in question. The rates to Harlem River did not include free lighterage or floatage to Greenville and the movement from Harlem River to Greenville, and the charge for that movement, when made by the New Haven, was specifically provided for in a separate tariff of that carrier. A tariff of the Pennsylvania, under which the rate of 12 cents from Greenville to Norfolk was charged, made that rate applicable from New York City and from all lighterage delivery points within the New York harbor lighterage limits, some of which are as distant from Greenville as is the Harlem River station of the New Haven. Hay in carload quantities is lightered free under this tariff, but the floatage of equipment loaded with hay or other commodities is not performed free for less than six cars. The float bridges of the New Haven at Harlem River are within these limits, but the Pennsylvania station list shows Greenville and Jersey City as the only recognized points of interchange with the New Haven.

It appears that on all traffic interchanged between the Pennsylvania and the New Haven in New York harbor the latter carrier actually performs the transfer or flotation service; and where joint rates are maintained the divisions of the carriers take care of the charges for that service. Where there are no joint rates the rates charged to New York City by the New Haven, when including free lighterage, cover the service; in all other cases, such as the present, the floatage charges of the New Haven apply.

While the shipments involved were moving, the Pennsylvania expressed its willingness to call for the shipments at the float bridges of the New Haven at Harlem River. But the latter carrier handled the shipments and, under its tariffs, collected the charges for flotation, which complainants contend made the total through charges unreasonable. This was the proper course to pursue, as the inter-

change of freight between the New Haven and the Pennsylvania at Harlem River was not authorized by the tariffs.

Nevertheless the rates from points of origin to the Harlem River station of the New Haven, plus the rate from New York lighterage points to Norfolk, were at the time the shipments moved measures of reasonableness for through charges from points of origin to destination; and it was unreasonable to charge complainants for the through movement more than the rates applicable from points of origin to a New York harbor point within lighterage limits plus the rate from the lighterage limits to destination. The offer of the Pennsylvania to accept these cars from the New Haven at Harlem River was affirmed at the hearing. If the offer had been acceptable under the tariffs, some expense would have accrued, and similar expenses are covered in the rate of the Pennsylvania from "New York lighterage" to Norfolk.

Something was said at the hearing with respect to the uncertainty of providing six of these cars for floatage from Harlem River to Greenville at any one time. This contingency, however, could apply only in case the Pennsylvania had actually performed the service; and, as these shipments all moved within a comparatively short period, we think there is little to commend the suggestion. As has been pointed out above the interchange of traffic between the New Haven and the Pennsylvania is accomplished at Greenville or Jersey City, the New Haven performing the necessary lighterage or floatage, and with the New Haven performing the service no question concerning the number of cars floated could arise. The adjustment of charges under this report should not be a matter too difficult for these carriers to make. Had the Pennsylvania performed lighterage or floatage it would have incurred expenses in addition to those it actually bore in connection with these shipments; its tariff applied the rate to all lighterage points; and it performed no lighterage service.

We find that the through charges collected by defendants on the shipments in question were unreasonable to the extent that they exceeded the through charges that would have accrued on the basis of the rates from points of origin to Harlem River, N. Y., plus the rate from New York, lighterage delivery, to destination; that complainants made the shipments as described and paid and bore the charges thereon; that they were damaged to the extent of 3 cents per 100 pounds on all of the shipments; and that they are entitled to reparation with interest. The exact amount of reparation due can not be determined on this record. Complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to de-

fendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

The tariffs of defendants should be amended to avoid the anomalous condition here disclosed. If this is not done voluntarily within 90 days from the service of this report, and notification filed herein, the matter will be further considered, with a view to the entry of an order.

No. 8162.

KENTUCKY-INDIANA HARDWOOD COMPANY

v.

SOUTHERN RAILWAY COMPANY IN MISSISSIPPI ET AL.

Submitted November 24, 1915. Decided February 6, 1917.

1. Charges collected by defendants on a carload of rough gum lumber from Richey, Miss., to Narrows, Ky., found to have been illegal to the extent that they exceeded those which would have accrued at the rate of 20 cents per 100 pounds applicable over the route of movement.
2. The shipment found to have been misrouted by the Southern Railway Company in Mississippi.
3. Reparation awarded against all defendants for the amount of the illegal charges collected, and against the Southern Railway Company in Mississippi for the amount complainant was damaged by the misrouting.

Herbert Bauman for complainant.

Alex. M. Bull for Southern Railway Company and Southern Railway Company in Mississippi.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale lumber business at Louisville, Ky. By complaint, filed July 15, 1915, it alleges that the rate of 21 cents per 100 pounds charged by defendants for the transportation of a carload of rough gum lumber shipped from Richey, Miss., to Narrows, Ky., in March, 1915, was unreasonable, unjustly discriminatory, and in violation of the long-and-short-haul rule of the fourth section in that it exceeded the rate of 18 cents per 100 pounds contemporaneously maintained to Owensboro, Ky., a more distant point. Reparation is asked.

Richey is a local station on a branch of the Southern Railway in Mississippi. Owensboro is the terminus of a branch line of the Illinois Central Railroad which connects with the Louisville-Paducah main line of that carrier at Horse Branch, Ky. Narrows is located on this branch, about 40 miles south of Owensboro.

The shipment in question was routed by the shipper by way of the Illinois Central Railroad, but no junction point was specified. It weighed 59,800 pounds and moved: Southern Railway in Mississippi through Winona, Miss., to Columbus, Miss.; Southern Railway to Birmingham, Ala.; Alabama Great Southern Railroad to Chattanooga, Tenn.; Cincinnati, New Orleans & Texas Pacific Railway to Danville, Ky.; Southern Railway to Louisville; and Illinois Central Railroad, through Horse Branch, thence to destination, a total distance of approximately 872 miles. No joint rate was in effect. Charges were collected in the sum of \$125.58. The rate applicable was a combination rate of 20 cents per 100 pounds: 13 cents from Richey to Owensboro and 7 cents from Owensboro to Narrows. The shipment was overcharged \$5.98. The 20-cent rate also applied by way of the Southern Railway in Mississippi to Winona and the Illinois Central Railroad beyond. The distance over this route is approximately 529 miles. As the routing specified by the shipper was complete, it was the duty of the Southern Railway in Mississippi to deliver the shipment to the Illinois Central Railroad at Winona.

The Yazoo & Mississippi Valley Railroad, in connection with the Illinois Central Railroad, has for a long time accorded to Narrows the Owensboro basis of rates on lumber from Mississippi points on its line near Richey. In *Fourth Section Applications 542 et seq.*, 25 I. C. C., 50, the Southern Railway Company in Mississippi was denied authority to maintain rates on lumber by way of direct routes from stations on its line to Ohio River points on the lines of its connections, including the Illinois Central Railroad, lower than the rates contemporaneously maintained to intermediate points, exception being made with respect to those routes which were at least 15 per cent longer than the short routes. The distance from Richey to Narrows by way of the route over which the shipment in question moved exceeded by more than 15 per cent the distance by way of the direct route. In supplement No. 29 to its tariff I. C. C. No. 182, published to become effective October 1, 1914, the Southern Railway Company in Mississippi proposed to establish a rate of 13 cents on gum lumber from Richey to Narrows, applicable only by way of West Point, Miss., or Winona. That supplement was suspended on protests filed respecting other rates published therein. It was later canceled, and the 13-cent rate was never established.

In *Rates on Lumber from Southern Points*, 34 I. C. C., 652, decided July 12, 1915, we found the rate of 15 cents then applicable on hardwood lumber, other than gum and cottonwood, from points in the lumber-producing territory in which Richey is located to Owensboro, to be a reasonable rate on gum lumber from and to the same points. On September 26, 1915, the rate on lumber of all kinds from Richey to Owensboro was made 15 cents, applicable only by way of West Point or Winona. February 1, 1916, a joint rate of 15 cents was established to Narrows and other points on the Owensboro branch of the Illinois Central Railroad, with the same restrictions as to routing. The present adjustment conforms to the requirements of the fourth section.

We find that the Southern Railway Company in Mississippi misrouted the shipment; that the rate applicable over the route the shipment should have moved was unreasonable to the extent that it exceeded 15 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it was damaged by the misrouting to the extent of the difference between the charges that would have accrued at the rate applicable over the route of movement and the charges that would have accrued at the rate of 15 cents per 100 pounds; and that it is entitled to reparation from the Southern Railway Company in Mississippi in the sum of \$29.90, with interest; also to reparation from all of the defendants in the sum of \$5.98, with interest, the amount of the above-mentioned overcharge. No order for the future is necessary.

48 I. C. C.

No. 8472.
BIG MUDDY COAL & IRON COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted April 10, 1916. Decided November 10, 1916.

Rates on bituminous coal in carloads from mines in the southern Illinois group to St. Charles, Mo., found unduly prejudicial as compared with the rates on the same commodity from the Belleville, Ill., group to St. Charles, and a proper relationship of rates prescribed for the future.

L. C. Meid and Thomas L. Philips for complainant.

R. E. Eggebrecht and R. W. Ropiequet for Coal Operators Traffic Bureau of St. Louis, Mo., intervener.

W. W. Miller for Missouri, Kansas & Texas Railway Company.

B. J. Rowe for Illinois Central Railroad Company.

H. R. Brashear and N. S. Brown for Wabash Railway Company, intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in the coal business, with its principal office at St. Louis, Mo. By complaint, filed November 22, 1915, it alleges that defendants' rate for the transportation of bituminous coal, in carloads, from mines in Illinois in the group numbered 4 in Illinois Central tariff I. C. C. No. E-1293, generally known as the southern Illinois group, to St. Charles, Mo., is unreasonable and unjustly discriminatory to the extent that it exceeds by more than 15 cents per net ton the rate from mines in Illinois in the group numbered 1 in the above-mentioned tariff, known as the Belleville group, to the same destination. Rates are stated in dollars and cents per ton of 2,000 pounds.

Complainant operates mines in the southern Illinois group, which is east of St. Louis. The Belleville group is between St. Louis and the southern Illinois group. St. Charles is served by the Missouri, Kansas & Texas and the Wabash railways, and is 39 miles west of St. Louis by way of the former line and 23 miles by way of the latter.

Rates on coal from mines in southern Illinois to points in Missouri are usually based on proportional rates to East St. Louis, Ill., the

charge for crossing the bridge to St. Louis, and the local rates beyond St. Louis. The proportional rates on bituminous coal from groups 1 and 4 to East St. Louis are 25 cents and 40 cents, respectively; the bridge toll is 20 cents, and the local rate from St. Louis to St. Charles is 60 cents, a total of \$1.05 from group 1 and \$1.20 from group 4. The present group 4 rate is constructed on the usual basis. The Wabash serves mines at Mount Olive and Staunton, Ill. Mount Olive is shown as a group 1 point in the Illinois Central tariff referred to; Staunton is between Mount Olive and St. Louis. The Wabash has a one-line haul from these mines to points on its line in Missouri and maintains rates from and to such points which are made on a basis lower than the usual one. Its rate from Mount Olive and Staunton to St. Charles is 95 cents. In order to meet competition from the Wabash mines, the Missouri, Kansas & Texas and its connections also departed from the usual basis in fixing rates from group 1 mines to St. Charles. The present rate is 95 cents. The spread between the rate from group 1 and the rate from group 4 to St. Charles is 25 cents. This is 10 cents more than the spread between the proportional rates to East St. Louis. Complainant cited rates carried in the Illinois Central tariff above referred to and from groups 1 and 4 to numerous stations on the Missouri, Kansas & Texas and on the Wabash, on each side of St. Charles, and also rates to points on various other lines in the same general territory as is St. Charles, in all of which cases the spread between the rates from the two groups is 15 cents. Complainant testified that the present difference between the rate from group 1 and the rate from group 4 to St. Charles seriously prejudiced it in doing business at St. Charles in competition with mines in group 1.

The Missouri, Kansas & Texas stated that the conditions which resulted in the establishment of the present rate from group 1 to St. Charles did not exist with respect to the rate from group 4. The principal objection to the adjustment sought by complainant was made by the Wabash, which became a party to this proceeding by intervening petition. Its interest grows out of a desire to keep mines on its line in the St. Charles business. It contends that the present rate from group 4 to St. Charles, which is made on the usual basis, is reasonable, and cited various rates on coal by way of comparison. No justification appears for the present spread between the rate from group 1 and the rate from group 4 to St. Charles, but, on the contrary, intervener admitted that, generally speaking, conditions affecting transportation from group 1 and from group 4 to St. Charles were not substantially different from those attending the

transportation to the other points in the same territory cited by complainant.

We find that the rate assailed is not shown to be unreasonable, but that it is unduly prejudicial to the extent that it exceeds by more than 15 cents per net ton the rate from group 1 mines to St. Charles, and this discrimination will be required to be removed. An order will be entered accordingly.

No. 8547.

INTERNATIONAL PAPER COMPANY

v.

MAINE CENTRAL RAILROAD COMPANY ET AL

Submitted April 4, 1916. Decided February 6, 1917.

Rate charged by defendants on certain shipments of printing paper from Franklin, N. H., to Augusta, Me., found to have been unreasonable. Reparation awarded and rate of 12 cents per 100 pounds prescribed as a reasonable maximum rate for the future.

D. C. Lorentz for complainant.

Charles H. Blatchford for Maine Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing and selling paper, with its principal office at New York, N. Y., and a place of business at Franklin, N. H. By complaint, filed December 22, 1915, it alleges that the rate of 18 cents per 100 pounds charged by defendants on certain carloads of printing paper shipped from Franklin to Augusta, Me., during the period from December 10, 1914, to December 8, 1915, inclusive, was unjust and unreasonable. Reparation is asked, and the establishment of a reasonable rate for the future. Rates are stated in cents per 100 pounds.

The shipments were loaded into 32 cars and moved, under 25 bills of lading, by way of the Boston & Maine Railroad to Deering Junction, Me., and the Maine Central Railroad thence to Augusta, a total distance of 161 miles. The official classification, which governed, rated printing paper, in carloads, minimum 36,000 pounds, fifth class. Each of the shipments weighed in excess of 36,000

pounds. Charges were collected in the sum of \$2,393.08, based on an aggregate weight of 1,329,481 pounds and the joint fifth-class rate of 18 cents. Effective April 3, 1916, defendants established from Franklin to Augusta a commodity rate on printing paper in carloads of 15 cents, equivalent to the sixth-class rate. They expressed willingness on the special docket to make reparation on the shipments in question on basis of the 15-cent rate.

During the period of movement a commodity rate of 12 cents, minimum 30,000 pounds, applied on printing paper from Augusta to Franklin by way of defendants' lines, and this rate is still in effect. Complainant contends that the rate charged was unreasonable to the extent that it exceeded the 12-cent rate applicable in the opposite direction.

The following table, compiled from an exhibit introduced by the complainant, shows the rates on printing paper, in carloads, from Augusta and Livermore Falls, Me., to certain points on the Boston & Maine and the New York, New Haven & Hartford railroads, and the per ton-mile earnings under the rates shown:

To—	From Augusta.			From Livermore Falls.		
	Distance.	Rate per 100 pounds.	Revenue per ton- mile.	Distance.	Rate per 100 pounds.	Revenue per ton- mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Concord, N. H.....	162	10.0	12.3	167	12.5	15.0
Boston, Mass.....	169	10.0	11.8	174	10.5	12.1
Peterboro, N. H.....	191	10.0	10.5	196	12.5	12.8
Bellows Falls, Vt.....	231	12.0	10.4	236	14.0	11.9
Springfield, Mass.....	267	13.0	9.7	272	15.0	11.0
New Haven, Conn.....	326	16.0	9.8	331	16.0	9.7
New York, N. Y.....	401	16.0	8.0	406	16.0	7.9

The minimum under the rates shown in the above table is 30,000 pounds, with the exception of the rates to New Haven and New York, under which the minimum is 36,000 pounds.

Complainant also cites commodity rates on printing paper in carloads by way of defendants' lines to Augusta, as follows: From Berlin, N. H., 194 miles, 14 cents; from Turners Falls, Mass., 241 miles, 15 cents. These rates yield revenues per ton-mile of 14.4 mills and 12.4 mills, respectively. The rate from Turners Falls is applicable only on "news printing paper."

The 18-cent rate charged yielded 22.3 mills per ton-mile. Defendants' present rate of 15 cents from Franklin to Augusta yields 18.6 mills per ton-mile. The 12-cent rate would yield 14.9 mills per ton-mile, and, based on 41,500 pounds, the approximate average loading of the cars in question, the car-mile earnings at that rate would have been 30.9 cents.

The general current of paper traffic is from producing points in New England to the south and west. It appears, however, as evidenced by the shipments in question, that there is a substantial movement from Franklin to Augusta. The extent of the movement from Augusta to Franklin is not disclosed. Defendants state that the movement from Franklin to Augusta is across the current of traffic and through many junction points. The class rates, however, are the same in both directions, and the facts of record do not justify a rate on printing paper from Franklin to Augusta higher than the rate applicable in the opposite direction.

We find that the rate assailed was and for the future will be unreasonable to the extent that it exceeded and may exceed 12 cents per 100 pounds, minimum 30,000 pounds; that complainant made the shipments as described, and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$797.70, with interest.

An appropriate order will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 885.
NEW ENGLAND RAIL AND LAKE.

Submitted December 26, 1916. Decided February 12, 1917.

Proposed increased rates, rail lake and rail, and rail and lake, from points in New York and New England to Duluth and St. Paul, Minn., and related points, with certain exceptions, found justified.

W. C. Chisholm for respondents.

James Cameron for Grand Trunk Railway system.

W. P. Trickett and *T. A. McGrath* for Minneapolis Traffic Association.

G. Roy Hall for Commerce Club of Duluth.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Agent Pierce's tariff I. C. C. No. 146, published to become effective July 15, 1916, proposed to increase certain rates, rail lake and rail, and rail and lake, via the Grand Trunk Railway system and the Northwestern Steamship Company, formerly known as the Port Huron & Duluth Steamship Company, from certain points in New York and New England to Duluth and St. Paul, Minn., and points taking the same or related rates. By appropriate orders entered upon the protest of the Minneapolis Traffic Association this tariff, which was intended to cancel Pierce's I. C. C. No. 22, was suspended until May 12, 1917.

The increased rates were grouped by protestants under three heads, and they will be so considered here. Rates will be stated in cents per 100 pounds.

1. THE ELIMINATION OF COMMODITY RATES FORMERLY CARRIED IN AGENT PIERCE'S TARIFF I. C. C. NO. 22.

For respondents it was explained at the hearing that 18 of these commodity rates are now carried in agent Davis's tariff I. C. C. No. 32. Other commodity rates were omitted by respondents because they found on investigation that no traffic ever moved thereunder. The only other rates referred to by protestants had been canceled before the tariff under suspension was filed.

**2. CLASS RATES ON GRANITE FROM STATIONS ON THE CENTRAL VERMONT
RAILWAY AND MONTPELIER & WELLS RIVER RAILROAD.**

The following table shows the present and proposed rates from these stations to points taking Duluth or St. Paul rates:

	R. 26.	4	5	6
St. Paul rate points:				
Present	56.0	49.0	42.0	35.0
Proposed	58.2	50.8	43.5	36.8
Duluth rate points:				
Present	56.0	49.0	42.0	35.0
Proposed	37.2	32.8	27.5	23.8

It will be noted that slight increases are proposed to St. Paul rate points and material reductions to Duluth rate points. It was testified for respondents that these rates had been published in error and would be canceled. We find that these rates have not been justified.

3. INCREASED COMMODITY RATES.

Certain increased commodity rates on ammunition and cartridges are proposed, as shown below:

To—	From New York.		From Boston.		From Burlington.	
	Present.	Proposed.	Present.	Proposed.	Present.	Proposed.
Duluth rate points	19	21	20	22	19	21
St. Paul rate points	24	25	25	26	22½	25

No evidence was offered in support of these proposed rates, and we find that they have not been justified.

The other increases proposed in commodity rates relate, with but one exception, hereinafter considered, to rates from Burlington, Vt., to St. Paul rate points. The commodities affected are asphalt, binding twine, electrical machinery, electric mining locomotives, lath yarn, mahogany lumber, size, and starch. The increases proposed in these rates vary from 1½ to 2 cents. Respondents explain that these increases were made to place Burlington, with respect to St. Paul rates, upon the same basis as New York. Burlington and New York are now upon the same basis with respect to the rates to Duluth, and respondents state that there is no reason for the existing differences in the St. Paul rates. The present class rates and the rates on most commodities from Burlington to St. Paul are the same as those from New York.

The tariff under suspension also proposes an increased rate on sodic aluminic sulphate from New York to St. Paul rate points. The present rate is 19½ cents. The proposed rate, 21½ cents, is the rate now provided for other soda products, such as alum, bleach, and sulphate of lime. The present rate on sodic aluminic sulphate from Burlington to St. Paul rate points is 21½ cents.

With the exceptions noted we find that the increased rates have been justified. An order will be entered accordingly.

48 I. C. C.

No. 8570.¹

NELLIE M. EDMOND

v.

GROTON & STONINGTON STREET RAILWAY COMPANY
ET AL.

Submitted May 12, 1916. Decided February 12, 1917.

Increased fares for the transportation of passengers between points in Connecticut on the Groton & Stonington Street Railway and Westerly, R. I., found reasonable.

Benjamin H. Hewitt, Warren B. Burrows, and Allyn L. Brown for complainants.

C. L. Avery, Charles Conrads, and Arthur B. Hayes for defendants.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Complainant in Docket No. 8570 is a resident of Westerly, R. I., and is a school-teacher in the public school of the town of Mystic, Conn. By complaint, filed January 3, 1916, she attacks the reasonableness of the fares charged by defendants Groton & Stonington Street Railway Company and Norwich & Westerly Traction Company for transportation between Westerly and Mystic. Other teachers in the public schools of the town of Stonington, Conn., who are also residents of Westerly, intervened in support of the complaint.

Complainant in Docket No. 8570 (Sub-No. 1) is a resident of Mystic. By complaint, filed January 3, 1916, he attacks the reasonableness of the fares charged by defendants Groton & Stonington

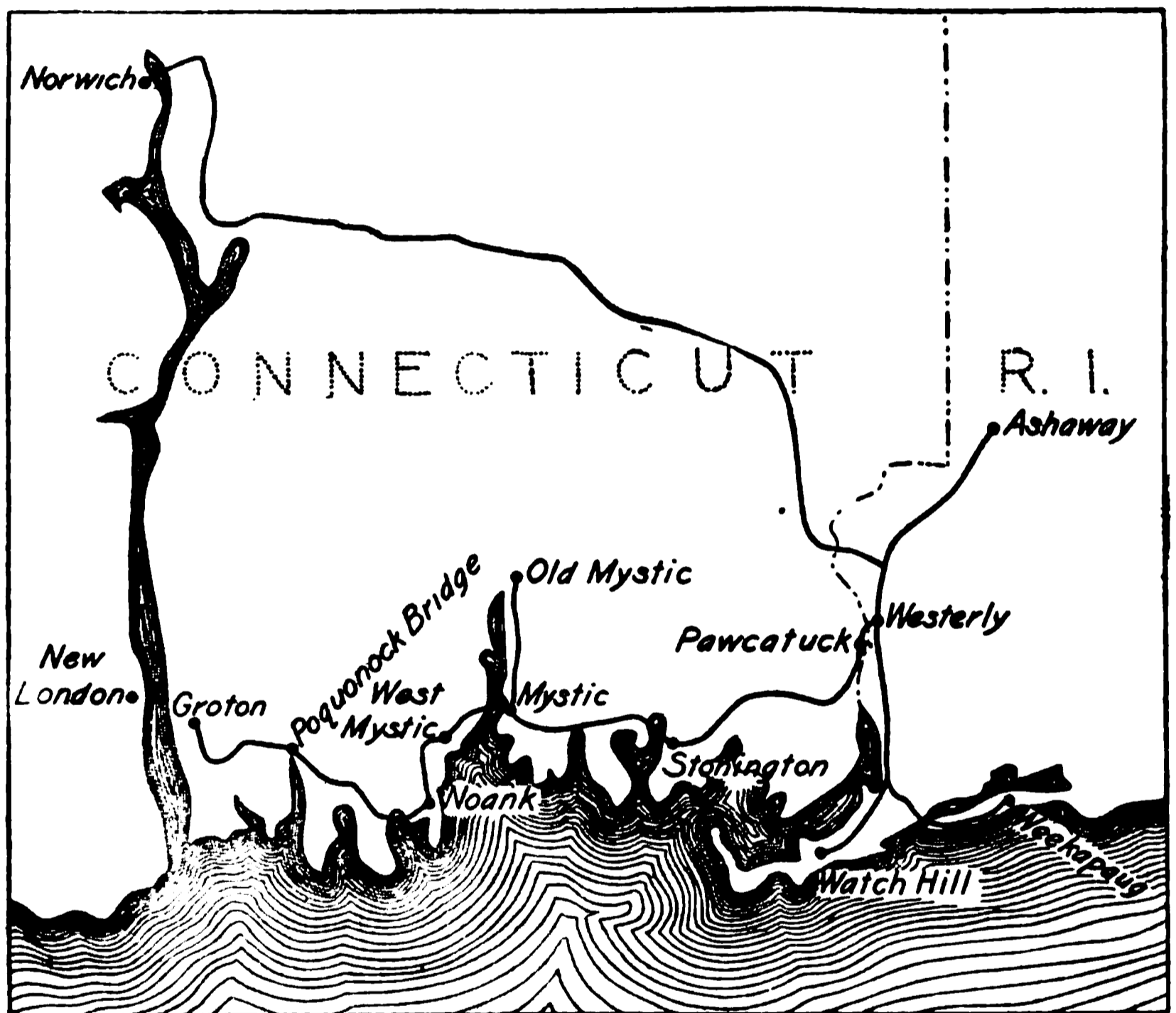
¹ The proceeding also embraces complaint in No. 8570 (Sub-No. 1), *Charles T. Crandall v. Same*.

48 I. C. C.

Street Railway Company and Norwich & Westerly Traction Company for transportation between Westerly and all points on their lines in Connecticut. The town of Groton, Conn., intervened in support of this complaint.

The defendant, the Norwich & Westerly Traction Company, hereinafter called Norwich Company, has since July 1, 1912, operated under lease the line of the Groton & Stonington Street Railway Company, hereinafter called the Groton Company.

The line of the Groton Company lies wholly within the state of Connecticut. It extends from Groton, on the east bank of the



Thames River, opposite New London, to the Connecticut end of the Pawcatuck River bridge opposite Westerly, with a short branch from the midway point of Mystic north to Old Mystic, about 28½ miles in all. The Norwich Company owns and operates a line from Norwich, Conn., to Westerly, crossing the Pawcatuck River bridge, and since taking over as lessee the operation of the Groton line has run cars of that line over the bridge into Westerly. The distance so operated in Rhode Island is 0.29 of a mile. The Norwich Company also operates lines from Westerly to Ashaway, Watch Hill, and Weekapaug, R. I. The accompanying map shows the lines referred to and the principal points served.

The evidence was confined to fares between Westerly, just east of the Pawcatuck River, which separates the two states, and certain stations in Connecticut on the line of the Groton Company.

On September 28, 1915, defendants filed with us a proposed tariff of intrastate and interstate fares to take effect November 1, 1915. The interstate fares were between various points in Connecticut and Rhode Island, respectively. This tariff, among other things, provided as to intrastate traffic that school tickets should be sold in books of 300 tickets for \$3, but proposed to cancel in respect of interstate traffic the following provision in the tariff then in effect:

School commutation ticket books, good until used, between all points on the Groton & Stonington division, containing 50 tickets, may be obtained upon the payment of \$1.50. School commutation ticket books, good until used, between all points on the Norwich & Westerly, Pawcatuck Valley and Ashaway division, containing 100 tickets, may be obtained upon the payment of \$3.50. These books may be purchased by any person from 5 years of age to 21 years of age, and good only between the hours of 7 o'clock a. m. and 6 o'clock p. m.

The tariff in effect prior to November 1, 1915, also provided for special rate tickets between Stonington and Westerly and between Mystic and Old Mystic, Conn. The tariff effective November 1, 1915, canceled these special rate tickets and also provided for certain increases in interstate and intrastate fares hereinafter referred to.

After this tariff was filed with us, but before its effective date, protests were made by one of the counsel for complainant in No. 8570, by complainant in the subnumber, and by the Men's Club of Mystic, and on October 28, 1915, in Investigation and Suspension Docket No. 734, *Connecticut-Rhode Island School Tickets*, we suspended until February 29, 1916, the item of that tariff which proposed to cancel the school ticket provisions above quoted, because of the discrimination which would apparently result as between interstate and intrastate passengers. Defendants erroneously understood our suspension order to apply to the entire tariff, and on November 3, 1915, tendered a supplement purporting to announce the suspension of the entire tariff. This supplement was rejected by us, as the new tariff, except the suspended school ticket provisions, had become effective on November 1, 1915. The new fares, however, which it named were not being collected because of defendants' misinterpretation of our suspension order. Defendants appear to have been advised of the correct interpretation about November 21, 1915, and on that day published in a Westerly newspaper, and circulated on their cars among their patrons, an advertisement giving notice that the new tariff, except as to school tickets, would go into effect on the following morning. Collection of the new fares accordingly began on November 22, 1915.

Following our suspension order of October 28, 1915, protests against the new tariff were immediately filed by the selectmen of Stonington and by others on November 22, 1915, but as the tariff except the school ticket provisions had already become effective on November 1, we were without authority to suspend. The protests indicate that the patrons of the Groton line were aware before the tariff went into effect that increased fares were proposed. Before expiration of our suspension order the proposed cancellation of the school ticket provision was itself canceled by the carriers, effective December 24, 1915, the original provision above quoted was thereby restored, and the investigation and suspension proceeding was accordingly discontinued.

As previously stated the interstate fares before us are those between Westerly and Connecticut stations on the Groton line. They represent but a small part of the passenger operations and revenue of that line. The complaints in this proceeding were provoked by the increases in these fares published to become effective November 1, 1915, but which, as already noted, were not collected until November 22, 1915. Defendants assert that these increases were compelled because of the insufficient return derived from their former rates. In support of this statement the financial history of the companies is set forth in considerable detail.

In *Matter of Petition of H. Lillian Hewitt et al., Relative to the Rates and Charges of the Groton and Stonington Street Railway Company*, this same question came before the Public Utilities Commission of Connecticut in connection with increased intrastate fares also published to become effective November 1, 1915. A careful investigation of the financial condition of the defendant companies and of the increased intrastate fares was made by that commission, and in an opinion handed down on May 17, 1916, it found that the return afforded by the new schedule was not excessive and that the increased intrastate fares were reasonable. Certain inequalities, however, were found which the defendants were required to remove.

Upon a careful consideration of the record we are of opinion and find that the increased interstate fares are also reasonable. These fares are constructed upon the same basis as the intrastate fares considered by the Public Utilities Commission of Connecticut. The facts of record before us in regard to those fares have been fully stated in the opinion of that body and it will serve no useful purpose to restate them here.

An order will be entered dismissing the complaints.

SOUTHERN PACIFIC COMPANY'S OWNERSHIP OF ATLANTIC STEAMSHIP LINES.

No. 6606.

APPLICATION OF SOUTHERN PACIFIC COMPANY, UNDER THE PROVISIONS OF SECTION 5 OF THE ACT TO REGULATE COMMERCE AS AMENDED BY THE PANAMA CANAL ACT, IN CONNECTION WITH ITS OWNERSHIP OF THE ATLANTIC STEAMSHIP LINES.

Submitted June 1, 1916. Decided January 24, 1917.

Upon application of the Southern Pacific Company, under the provisions of section 5 of the act to regulate commerce as amended by the Panama Canal act, for an extension of time beyond July 1, 1914, during which petitioner may continue to operate or have an interest in its Atlantic Steamship lines operated between Galveston and New York, New Orleans and New York, and New Orleans and Havana, *Held:*

1. The Southern Pacific Company does not and may not compete for any traffic with its Atlantic Steamship lines operating between New Orleans and Havana, Cuba.
2. The Southern Pacific Company does or may compete with its Atlantic Steamship lines operating between Galveston and New York and between New Orleans and New York for through transcontinental traffic.
3. Certain of the practices of the Southern Pacific Company in connection with the operation of the Atlantic Steamship lines between Galveston and New York and between New Orleans and New York are unduly discriminatory and otherwise prejudicial to the public interest.
4. Under present conditions an extension of time within which the petitioner may continue to operate or have any interest in the steamship lines between Galveston and New York and between New Orleans and New York will not exclude, prevent, or reduce competition on the routes by water, and if the practices referred to herein are corrected will be in the interest of the public and of advantage to the convenience and commerce of the people.
5. The case will be held open for a period of 60 days, at the expiration of which time final action will be announced.

Fred H. Wood for Southern Pacific Company.

James C. Lincoln for Merchants Association of New York.

W. M. Barrow for New Orleans Joint Traffic Bureau.

H. H. Haines for Galveston Commercial Association.

Seth Mann for San Francisco Chamber of Commerce, San Jose Chamber of Commerce, Santa Cruz Chamber of Commerce, Santa Rosa Chamber of Commerce, and Watsonville Chamber of Commerce.

D. P. Chindblom for Rochester Chamber of Commerce.

Herbert Sheridan for Baltimore Chamber of Commerce and Canned Goods Exchange of Baltimore.

W. H. Chandler for Boston Chamber of Commerce.

A. E. Beck for Merchants & Manufacturers Association of Baltimore.

Wm. A. Sproull for Philadelphia Chamber of Commerce.

H. O. Black for Texas Hardware Jobbers Association.

Edgar B. Stern for New Orleans Cotton Exchange.

Louis S. Goldstein for New Orleans Association of Commerce.

Sam Blum for New Orleans Board of Trade.

REPORT OF THE COMMISSION.

MEYER, Chairman:

The Southern Pacific Company, by an application filed on February 18, 1914, asks for an extension of the time during which it may continue to operate or have an interest in the Atlantic Steamship lines which it operates between New Orleans and New York, Galveston and New York, and New Orleans and Havana, Cuba. All of the floating equipment employed in these several water line services, which is popularly referred to as the Morgan line, is directly owned by the Southern Pacific Company.

The Southern Pacific Company's rail system includes the Southern Pacific Railroad Company, extending from San Francisco north to Portland, Oreg., east to Ogden, Utah, and south and east to El Paso, Tex.; the Galveston, Harrisburg & San Antonio Railway Company, extending from El Paso to Houston, with a branch from Houston to Galveston; the Texas & New Orleans Railroad Company, extending from Houston to the Texas-Louisiana state line; the Louisiana & Western Railway Company, extending from the Texas-Louisiana state line to Lafayette, La.; and Morgan's Louisiana & Texas Railroad & Steamship Company, extending from Lafayette to Algiers, La., opposite New Orleans. This system actively participates in two all-rail transcontinental routes—one through the El Paso gateway and the other through the Ogden gateway.

The fleet of steamships affected by the application includes 23 ocean-going steamers, 5 of which maintain direct biweekly service in each direction between New Orleans and New York for freight and passengers; 15 maintain a direct triweekly service in each direction between Galveston and New York for freight only; 2 maintain a weekly service in each direction between New Orleans and Havana, Cuba, for freight and passengers; and 1, a tank steamer, is engaged in carrying fuel oil for company use from Tampico, Mexico, to Galveston and Algiers. Some of these steamers make occasional

trips between Gulf ports and Baltimore, Philadelphia, Boston, and other north Atlantic ports, carrying full cargoes. These special trips, however, have not interfered with the regularity of sailings throughout the year to and from New York. While the tank steamer *Topila* is chiefly engaged in carrying oil for company use, it has carried cargoes for oil shippers.

The rail lines operating from the Pacific coast through the El Paso gateway connect with the Atlantic Steamship lines at Galveston and New Orleans, forming two through transcontinental routes, partly by rail and partly by water, each known as the "Sunset-Gulf route." This route provides expeditious through service for both freight and passengers from New York and Atlantic seaboard territory to the southwest and the Pacific coast.

The original Morgan line, operating between New Orleans and New York, was owned by Charles Morgan. Mr. Morgan, in 1869, while in control of this steamship line, purchased the railroad extending from opposite New Orleans for a distance of 80 miles, to Morgan City, La. This rail line and the Morgan line have been jointly owned ever since that date. On February 1, 1883, the Southern Pacific Company acquired control of both. In this way, the Southern Pacific Company, in connection with its previously acquired rail lines, secured ownership of the Sunset-Gulf route through New Orleans. On August 2, 1902, the Southern Pacific Company inaugurated the other steamship line between New York and Galveston. At the same time it acquired the rail line extending from Galveston to Houston. Thus a new and shorter Sunset-Gulf route was established.

Practically all of the transcontinental freight carried over the Sunset-Gulf route moves through the port of Galveston. All passenger traffic over the Sunset-Gulf route moves through New Orleans, and about 60 per cent of the passenger traffic carried by this steamship line is through traffic. Of the total tonnage carried by the Morgan line between New York and the port of Galveston, approximately 30 per cent is billed from or to Galveston proper, and approximately 70 per cent is billed through Galveston from or to interior points in the southwest or the Pacific coast. Part of the 30 per cent billed locally from or to Galveston, however, is in fact through traffic. Of the total tonnage carried by the Morgan line between New York and New Orleans, about 70 per cent originates at or is destined to New Orleans locally, and almost 30 per cent originates at or is destined to points in Louisiana or Texas.

PETITIONER COMPETES WITH CERTAIN OF ITS STEAMSHIP LINES.

The record shows that the Southern Pacific Company's rail system and its rail connections form all-rail transcontinental routes via the

El Paso gateway and via the Ogden gateway. The record also establishes that these all-rail routes engage in the "most active and vigorous competition" with the Sunset-Gulf route and that the Southern Pacific Company, by its participation in the solicitation and carrying of traffic over these all-rail routes, actively competes with its Atlantic Steamship lines through both New Orleans and Galveston in their solicitation and carrying of traffic over the Sunset-Gulf route. We, therefore, find that the Southern Pacific Company's rail lines may and do compete with its Atlantic Steamship lines operating between New Orleans and New York and between Galveston and New York for through traffic. It follows that the time during which the petitioner may continue to operate or to have an interest in such service by water can not be extended by us, under the terms of the statute, unless the record shows that such extension will neither exclude, prevent, nor reduce competition on these routes by water and that the present operation is of advantage to the convenience and commerce of the people.

It does not appear that the petitioner does or may compete with the steamer line which it operates between New Orleans and Havana, or with the tank steamer *Topila*, which it operates between Tampico and Galveston and Algiers. These two lines may, therefore, be eliminated from further consideration in this report.

RESTRAINT OF COMPETITION.

The Commission found in a previous investigation that the inauguration of the Sunset-Gulf route, beginning in 1883, was expected to and did have the effect of eliminating water competitors from the transportation of freight between the Atlantic and Pacific coasts, and thus gave the transcontinental lines virtual control of ocean as well as land transportation between the coasts. *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329, at 347.

Within recent years certain new steamship lines have operated between New York and Gulf ports. In 1897 the Lone Star line began operation between New York and Galveston. It appears from the record that its failure was due to its inability to secure adequate divisions from its connecting rail lines. About 1910 the Texas City Steamship Company began operation between New York and Texas City. This company continued in business for only a short time. While it was in operation the competition between that line, the Morgan line, and the Mallory line appears to have been very keen, and this competition forced the port to port, as well as the through rates, to a lower level. The equipment of this company was acquired by the same interest that controls the Mallory line. The record does

not establish that the petitioner's interest in the Morgan line contributed to the failure of either of the above lines.

The Philadelphia & Gulf Steamship Company was an independent line operated between Philadelphia and New Orleans from 1909 until 1913. This company appears to have been organized in response to a demand on the part of New Orleans shippers for an independent line which would effectively compete with the Morgan line. There is much evidence in the record tending to show that from the inception of this line the Southern Pacific Company resorted to extreme measures to interfere with its successful maintenance. The record also tends to show that the Southern Pacific Company, exerting its influence as a railroad upon other railroads, prevented the Philadelphia & Gulf Steamship Company from securing the rate arrangements with its rail connections which were vital to its success. It clearly appears that this company, while it was in operation, actively competed with the petitioner's steamship line between New York and New Orleans. There is evidence that the petitioner's steamship line established low rates on certain traffic for the specific purpose of taking such traffic from this independent line, and substantially increased those rates as soon as this line ceased operation. There was also testimony to the effect that the Gulf Steamship Company, which the petitioner organized in 1912 and disbanded in 1914, was organized primarily for the purpose of fighting and destroying this independent line. Practically all of the above evidence was controverted by the general manager of the petitioner. Taking the evidence as a whole, however, the conclusion seems warranted that the Philadelphia & Gulf Steamship Company failed primarily because of the activities of the Southern Pacific Company.

There is other testimony of record tending to show that the fact that the Morgan line is the only regular steamship line operating between New York and New Orleans is attributable in a large measure to the joint ownership of the connecting rail and water lines of the Southern Pacific system.

While the above circumstances tend to show that the petitioner's interest in these steamship lines excludes, prevents, or reduces competition on these water routes, yet the record leads us to conclude that a severance of the joint ownership might have a still greater tendency to reduce competition. Of the large number of shipping interests represented at the hearing, not a single one advocated the divorcement of the Morgan line from the Southern Pacific system. Many disinterested witnesses, who have had years of familiarity with transportation conditions, expressed the conviction that a severance of the Morgan line from the Southern Pacific Company would be a calamity. This view was founded on the belief that if these lines

were separated the steamships would be transferred to other service and the Sunset-Gulf route would be temporarily, if not permanently, disrupted. We therefore are of opinion and find that under present conditions an extension of the time during which the petitioner may continue to operate or have an interest in these steamship lines will neither exclude, prevent, nor reduce competition on the routes by water.

CHARACTER OF THE SERVICE.

From the record it seems clear that the service furnished by these lines between New York and Galveston and New York and New Orleans is in many respects highly satisfactory to the shipping public. The regularity of the sailings, the frequency of the service, the expedition with which through shipments are handled, and the promptness in adjusting claims for damage and overcharge were testified to by numerous shippers. The efficiency and excellence of the present service over both of these routes appears not to be questioned. Rarely does a record before us present an array of witnesses whose testimony so uniformly indorses the character of the service as does this record.

The petitioner urges that the high character of the service is directly attributable to the fact that these steamship lines are owned by it. It is said that because the petitioner operates over 10,000 miles of railroad and thus influences the routing of enormous quantities of freight it is enabled to operate a large fleet of boats, and that this circumstance wholly accounts for the frequency of the service. It points out further that because of its rail interests it has been particularly active in developing through traffic; that this through traffic necessitates close connections between its boats and its trains, and that the regularity of the service springs from this circumstance. The petitioner also points out that the very fact that it inaugurated the Galveston line as an extension of its rail system tends to show that the existence of this line is attributable to the rail ownership.

Railroad control of a connecting boat line undoubtedly tends to perfect the through service, but it may well be attended by a neglect of the port to port traffic. Independent steamship operation, on the other hand, while tending to develop the port to port traffic, may result in a failure to develop the through service to the highest degree possible.

Moreover, while the community of interest between the Southern Pacific rail system and the Morgan line has no doubt tended to improve the joint service, it does not appear that this community of interest is dependent upon common ownership. The Southern Pacific rail system is so located that its highest development is natu-

rally dependent upon interchanging traffic with water lines at the Gulf ports. Even if the Southern Pacific Company had no financial interest whatever in the Morgan line it would still have a strong incentive to work in conjunction with the Morgan line for transcontinental traffic. It appears that the Southern Pacific rail system, in conjunction with such a water line, can make better transcontinental rates and give quicker through service than any all-rail transcontinental route. The maximum traffic possibilities of the Southern Pacific rail system depend on the development of through traffic over the Sunset-Gulf route. It may fairly be concluded, therefore, that even if the petitioner had no proprietary interest in these boat lines it would continue to have a substantial interest in maintaining and improving the through service.

EFFECT OF PETITIONER'S OWNERSHIP ON RATES.

The petitioner also contends that its ownership of these steamship lines has had the effect of securing lower rates for the shipping public. Indeed, it is urged that the present reduced transcontinental rates are attributable exclusively to the joint ownership or operation of the Southern Pacific rail and steamship lines. This claim merits careful consideration, for if warranted it would have a strong tendency to establish that a continuance of the petitioner's interest in these water lines was in the public interest. It appears, however, from the record that, in so far as the Southern Pacific Company has initiated reductions in transcontinental rates, this has been directly caused by controlling competitive influences and not by its interest in or control over these steamship lines. If the Southern Pacific Company upon acquiring control of the Sunset-Gulf route had promptly reduced transcontinental rates below the all-rail level it might be said that the joint control of the rail and water lines included in this route was the cause of the reduction. The fact is that for several years after this control was acquired the transcontinental rates over the Sunset-Gulf route were no lower than the all-rail rates. It is perhaps more accurate to say that the Southern Pacific Company in establishing reductions in rates over the Sunset-Gulf route has responded to the influence of competition via the all-water routes rather than that it has taken the lead in reducing transcontinental rates. In any event, it does not appear from the present record that the railroad ownership of this boat line has had any tendency in itself to reduce rates.

As to the port to port rates, it is frankly stated in the record that it has been the policy of the Morgan line to follow rather than lead other water lines in making reductions.

As affecting the rate situation, the petitioner also points out that against the opposition of the eastern trunk lines it has, by absorbing the local rail rates from the interior to New York, furnished a low level of through rates from the whole Atlantic seaboard territory as far inland as Buffalo and Pittsburgh to the southwest and the Pacific coast. Here again the benefit to the shipping public seems to be attributable to normally competitive influences rather than to the fact that the petitioner owns these steamship lines. At any rate the same policy seems to have been pursued by the Mallory line in connection with the Atchison, Topeka & Santa Fe Railway, between which companies there is no intercorporate relationship. Having in mind the peculiar dependence of the Southern Pacific rail system on a water connection, it would seem that the incentive for the Southern Pacific Company to solicit transcontinental traffic from Atlantic seaboard territory at the through rates which it has established would still be present if the petitioner had no interest in the steamship lines.

COMPLAINT OF NEW ORLEANS INTERESTS.

New Orleans is the one community which qualified its support of the application regarding these steamship lines. The New Orleans Joint Traffic Bureau, representing numerous large shippers at this port, intervened in the proceeding and submitted considerable evidence tending to show that the petitioner so operates these steamship lines as to discriminate against New Orleans and in favor of Galveston. None of these shippers advocated a divorcement of the steamship lines from the Southern Pacific system. They urged, however, that as a condition precedent to the granting of the application the petitioner should be required to correct certain discriminatory rates and practices which will be briefly outlined below.

A. NEW ORLEANS v. GALVESTON RATES.

Owing to differing competitive conditions, the rates between Atlantic seaboard territory and New Orleans are constructed on an entirely different basis from the rates between this territory and Galveston. Through rates are published from most interior points in north Atlantic territory via the Morgan line to New Orleans. From points in this territory to Galveston there are no published through rates, the rates being constructed by a combination of the locals to and from New York. The scale of class rates from New York to New Orleans is lower than the scale of class rates from New York to Galveston and a few of the commodity rates between the former points are lower than corresponding commodity rates between the latter points. Because of active water

competition which the Morgan line from New York to Galveston has had to meet for many years the port to port rates between New York and Galveston are to a large extent commodity rates relatively lower than the port to port rates applying on much of the traffic between New York and New Orleans. Thus it happens that while New Orleans nominally enjoys a lower scale of port to port rates than Galveston, it, in fact, is largely dependent on the class-rate scale, whereas Galveston enjoys substantially lower commodity rates on most of the traffic that moves. The New Orleans shippers contended that while they had through rates from interior Atlantic seaboard points lower than the combination rates applying to Galveston, this did not give New Orleans any appreciable advantage, because the great bulk of the Morgan line traffic originated at New York proper and not at interior points, so that it is the port to port rates in which New Orleans is primarily interested, and while New Orleans nominally has a lower scale of port to port rates, considering the relative class-rate adjustment, yet in fact New Orleans has to pay higher rates than Galveston on practically all its freight. These shippers contend that it is a discrimination against New Orleans to deny to it port to port rates as low as those enjoyed by Galveston, especially since the distance between New York and New Orleans is somewhat less than that between New York and Galveston.

The petitioner met the above assertions with the contention that it was justified by competitive conditions in maintaining lower port to port rates between New York and Galveston than between New York and New Orleans. Furthermore, the petitioner, taking issue with the New Orleans interveners, contended that a substantial amount of the traffic moving to New Orleans originated at interior Atlantic seaboard points, and that on such traffic the through rates to New Orleans were materially lower than the combination rates applying from these same interior points to Galveston. The petitioner also pointed out that if the same scale of port to port commodity rates was made applicable between New York and New Orleans as is in effect between New York and Galveston, then it would be only proper to cancel the through rates applying from interior Atlantic seaboard points to New Orleans, thus placing all New Orleans rates on the same level as Galveston. The interveners contended that New Orleans should retain the advantage of these through rates because they resulted from the all-rail competition which affected New Orleans but did not affect Galveston.

A large volume of testimony was taken tending to show that in view of the relative rates applying on particular commodities New Orleans was at a disadvantage as compared with Galveston. The

record, however, gives no indication as to the points in Atlantic seaboard territory at which shipments of these commodities originate, or as to the relative volume of these particular commodities moving between New York and New Orleans and Galveston, respectively.

It seems manifest that in a proceeding of this character it is not appropriate for the Commission to undertake to pass upon the relative or absolute reasonableness of particular rates. To the extent that the rate policy of a steamship line may be attributed to the fact that the line is owned by a railroad company, such rate policy may properly be considered in determining whether a continuance of the railroad ownership or operation is in the public interest. It does not appear, however, that the rate relationship above referred to is the result of the petitioner's control of these lines. The rate structure, so far as the record discloses, has resulted from considerations which an independent steamship management might well take into account in the fixing of port to port rates. It may be true that the port to port rates and the whole rate structure of the Morgan line, having in the past been to a large extent wholly unregulated, has resulted in New Orleans being deprived of the natural advantage it may have over Galveston in relation to certain markets. Our conclusion is that such inequalities as exist in these port to port rates may be more fairly determined and corrected in independent proceedings, and that it has not been shown that the petitioner's interest in the Morgan line is responsible for the rate relationship that now exists.

B. THE DRY GOODS MIXTURE RULE.

The New Orleans representatives also charged that the Morgan line discriminated against New Orleans and in favor of Galveston by providing to the latter point and not to the former a special commodity rate of 55 cents applying on mixed shipments of dry goods. This rate applies on any number of small shipments from any number of shippers when aggregated into a mixed lot of at least 20,000 pounds and shipped to one consignee. The port to port tariff covering this rate provides that "the rate will apply only when consignee is actually owner of the property." Since this proceeding the Morgan line has made this rate governed by the same rule applicable from New York to New Orleans. Under the rule as administered anyone who makes request on the Morgan line in advance and declares that he will have consigned to him at Galveston or New Orleans at least 20,000 pounds of mixed dry goods, of which he is the owner, may have the constituent shipments carried forward on one or several of the steamers of the Morgan line leaving New York within any given week. The aggregated shipment may be concentrated either at New York before shipment or at Galveston or New Orleans after arrival.

Although, as stated above, this rate and rule has been applied to New Orleans since this proceeding began, New Orleans still contends that the application of the rate is discriminatory and unlawful. The particular point urged by the New Orleans representatives is that the long continuance of the practice has led to the development of certain large dry goods distributing firms in Texas who can take advantage of the rate, whereas there are few, if any, firms in New Orleans who can avail themselves of the rate because of the limitation that it applies only when one consignee is the actual owner of the property. It is urged that conditioning the rate on ownership is unlawful in view of the decision of the Supreme Court in *I. C. C. v. D., L. & W. R. R. Co.*, 220 U. S., 235, at 252, and that the rule, though extended to both ports, will continue to work a discrimination against New Orleans unless the rate is applicable on shipments from any number of consignors to a forwarding agent at New Orleans for any number of firms.

From the record it is clear that during the period that this rule and rate were extended to Galveston and not to New Orleans there was a discrimination in favor of the former and against the latter. It is also urged that even though the rule and the rate are now extended to New Orleans, the dry goods distributors at New Orleans are not prepared to avail themselves of the newly extended rule, in competition with the Galveston distributors who have enjoyed the rule for years, and for this reason the rule continues to effect a discrimination in favor of Galveston. It is our view that the limitation of the rate to consignees who own all of the property contained in the aggregated shipment is unlawful.

The practice under the rule is inherently open to criticism. While a rule permitting the concentration at the point of shipment of numerous small shipments belonging to different shippers into one large shipment for transportation to one consignee *by a steamship* line may or may not be proper, there appears to be no justification for applying a special rate on small shipments which are aggregated at destination after the transportation service has been completed. In other words, if small shipments by different shippers move independently from New York to Galveston, then it seems clearly discriminatory to subsequently apply a rate to such shipments lower than the rate which other shippers of similar packages are charged. The conclusion is that this aggregating rule is discriminatory and unlawful in so far as it conditions the application of the rate on the ownership of the constituent shipments, and that it is also discriminatory and unlawful in so far as it applies on shipments other than those aggregated prior to transportation.

THROUGH VERSUS PORT TO PORT SHIPMENTS.

The present record discloses a widespread practice of applying on interstate traffic subject to the jurisdiction of this Commission rates which are not lawfully on file. The practice challenges attention because it appears to represent the rule rather than the exception and because it involves not merely the failure of the water carriers to file tariffs stating rates applicable on shipments subject to the jurisdiction of this Commission, but also the defeating of through rates which are lawfully on file. The practice appears to be engaged in consciously by both carriers and shippers. Two distinct phases of the matter will be briefly discussed.

A. FAILURE TO FILE PORT TO PORT RATES.

There are no through rates from interior Atlantic seaboard points via the Morgan line to Galveston. The Morgan line, in connection with its port to port rates from New York to Galveston, absorbs the rail rates from certain interior points to New York, but these port to port rates are not filed with the Commission. The record shows that it is not uncommon for rail carriers to receive shipments at interior points in Atlantic seaboard territory billed by the shipper, care of the Morgan line, to a consignee at Galveston. Such shipments are carried by the rail carrier to New York, there delivered by the rail carrier to the Morgan line, and then carried by the Morgan line direct to Galveston. An officer of the petitioner stated that interior shippers were advised not to bill their shipments through to Galveston in this manner and that whenever possible the Morgan line issued its own port to port bill of lading to the shipper. This official also urged in justification of the practice that there was no arrangement between the rail carrier and the Morgan line for continuous carriage. It is clear that there is frequently no actual or constructive intervention of the shipper or his agent at the port of New York in such cases. It is also clear that the rail carrier issues a through bill of lading and that the water carrier receives the shipment direct from the rail carrier and transports it in accordance with the directions the shipper gave to the rail carrier. Under these circumstances there seems to be no room for doubt that such shipments are continuous shipments carried under a common arrangement between the carriers. Shipments of this character clearly appear to be through shipments subject to the provisions of the act to regulate commerce and the failure of the Morgan line to file its rates applicable upon such shipments appears indefensible.

B. DEFEATING THE LAWFUL THROUGH RATES.

There are joint through ocean-and-rail rates from New York via the Morgan line to interior points in Texas. It appears, however,

that the combination of the unfilled port to port rates from New York to Galveston and the Texas state rates from Galveston to interior points in Texas makes lower through rates than these lawfully established through rates. A practice has grown up of applying to shipments which it would seem from the record are in fact through shipments from New York to interior destinations in Texas the combination rates based on Galveston and thus defeating the lawful through rates. It was admitted by officers of the petitioner that a large part of the traffic from New York to interior Texas points moved to Galveston on the port to port rate and from Galveston on the intrastate rate, and that the through interstate rates were rarely applied to Texas points to which the combination rates were lower.

The petitioner aims to justify the practice on the theory that the method of billing to a forwarding agent at Galveston and rebilling from Galveston, in a lawful way, interrupts the through shipment and converts it into two independent shipments. The record shows that the through traffic handled under these combination rates is commonly loaded direct from the boat to the dock at Galveston. Traffic destined to Galveston proper is commonly loaded from the boat to a barge. The director of traffic of the petitioner admitted that when freight was unloaded direct from a boat to the dock at Galveston it might fairly be inferred that such freight was to be shipped through. He added that as to any particular shipment the representative of the steamship company had no actual knowledge when a shipment was so unloaded that it was to be forwarded. It appeared to be assumed that in view of this lack of information the Southern Pacific interests could not be charged with knowledge that the through rates were applicable.

The actual handling of shipments to interior Texas points that are thus billed and rebilled from Galveston appears to be as follows: The Southern Pacific Company employs the stevedore who unloads the freight from the Morgan line boat to the dock. This same stevedore is employed by the connecting rail lines to load freight from the dock into their cars. The consignees at interior points in Texas who have their shipments billed to and from Galveston employ a forwarding agent at Galveston. This forwarding agent commonly arranges to have empty cars placed at the dock before the shipment arrives at Galveston. The forwarding agent pays the freight charges of the steamship company to Galveston and gives the rail carrier a shipping order directing the transportation by rail from Galveston. The shipment itself is in many instances unloaded directly from the boat to the car by the common employee of the boat line and the rail carriers. Thus it happens that if two shipments are carried from

New York via the Morgan line each in fact destined to Dallas, Tex., but one of them is billed through to Dallas while the other is billed in care of a forwarding agent at Galveston, the physical handling of the two shipments is the same. The only difference appears to be in the billing. It appears to have been assumed by both carriers and shippers that the mere method of billing gives support to a fiction that the shipper intervenes at Galveston and thus converts the through shipment which is subject to the act to regulate commerce into two independent shipments neither of which is subject to this act. Of course, this assumption is unsound. It seems needless to refer to the numerous expressions in which the Supreme Court has stated that it is the essential character of the shipment and not the mere incidents of billing which determine whether or not the shipment is subject to the act. The only justification suggested for the practice is the competitive relation between the port to port carriers. This justification involves the admission that the carriers concerned are primarily responsible for the practice.

CONCLUSION.

The correction of the objectionable practices above referred to would leave no basis of record to justify the withholding of the requisite finding, under the act, that the existing service of these steamship lines between New York and New Orleans and New York and Galveston is in the interest of the public and of advantage to the convenience and commerce of the people. The case will be held open for a period of 60 days from the service of this report, during which time the petitioner will have an opportunity to readjust the practices in question so as to bring the service into full conformity with the provisions of the act to regulate commerce as amended. At the expiration of that time the Commission will determine what final action should be taken.

INVESTIGATION AND SUSPENSION DOCKET No. 858.
SCRANTON-WILLIAMSPORT RAIL AND LAKE.

Submitted December 16, 1916. Decided February 21, 1917.

Proposed increased rail-and-lake and rail-lake-and-rail class and commodity rates from the Scranton, Williamsport, and Northumberland groups in Pennsylvania to Lake Michigan and Lake Superior ports and to St. Paul and Minneapolis, Minn., and other points found not justified. Tariffs ordered canceled.

W. P. Trickett and *T. A. McGrath* for protestant.

A. S. Learoyd for Delaware, Lackawanna & Western Railroad Company.

H. C. Oliver for Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

H. C. Burnett for Lehigh Valley Railroad Company.

Harry Wilson for Erie Railroad Company.

Douglass Swift for all respondents.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

By schedules, filed to take effect on various dates between June 5 and June 12, 1916, the respondents propose to increase the rail-and-lake and rail-lake-and-rail class and commodity rates from the Scranton, Williamsport, and Northumberland groups in Pennsylvania to Lake Michigan and Lake Superior ports and to St. Paul and Minneapolis, Minn., and points taking the same rates. Upon protest of the Minneapolis Traffic Association the proposed rates, which would apply only in connection with the Great Lakes Transit Corporation, were suspended until April 3, 1917. The effect of the proposed schedules would be to place the rates from the Scranton group on the Philadelphia, Pa., basis and those from the Williamsport and Northumberland groups on the Baltimore, Md., basis. Although both class and commodity rates are involved, the testimony was directed principally to the proposed class rates.

The territory of origin from which the proposed rates would apply is in the northeastern section of the state of Pennsylvania and lies, roughly speaking, east of a line extending south from the New York-Pennsylvania boundary through Williamsport to Northumberland and north of a line drawn from Northumberland through Scranton to Carbondale. The present class rates and the increases necessary to bring about the changes to the Philadelphia and Baltimore rate bases are shown in the following table. The rates in effect

during the period of navigation recently closed are referred to as present rates. Rates from the Northumberland group are the same as the rates from the Williamsport group and reference hereinafter to the latter will include the former.

Present and proposed class rates in cents per 100 pounds:

	Williamsport to Duluth. ¹						Scranton to Duluth. ¹					
	1	2	3	4	5	6	1	2	3	4	5	6
Proposed rates.....	54	46	38	27	22	18	56	48	39	28	23	19
Present rates.....	48	42	32	23	19	16½	50	44	33	24	20	17½
Increase.....	6	4	6	4	3	1½	6	4	6	4	3	1½

	Williamsport to St. Paul.						Scranton to St. Paul.					
	1	2	3	4	5	6	1	2	3	4	5	6
Proposed rates.....	75	64	51	35	29	23	77	66	52	36	30	24
Present rates.....	69	60	45	31	26	21½	71	62	46	32	27	22½
Increase.....	6	4	6	4	3	1½	6	4	6	4	3	1½

¹ The lake ports are Chicago, Ill.; Duluth, Minn.; Dollar Bay, Hancock, Houghton, Hubbell, Mackinac Island, Marquette, and Sault Ste. Marie, Mich.; Itaska dock, Milwaukee, and Superior, Wis.

Prior to 1911 the all-rail rates from points in the present Williamsport group to western percentage territory were on the Baltimore basis, while the rates from competitive territory in New York immediately to the north bore a percentage relation to the rates from New York City. The rates from Albany and Syracuse, for example, were, respectively, 80 and 70 per cent of the New York-Chicago rates. In 1911 the Pennsylvania Railroad decided, in view of the shorter distance from the Williamsport territory and the lower basis of rates from the competitive territory, that it was unfair to apply the Baltimore basis from points in the vicinity of Williamsport and was perhaps a hindrance to their development. The Williamsport group was therefore formed from the western portion of the Baltimore group and all-rail rates were established on the basis of 77 per cent of the New York-Chicago rates. This led to similar action by other carriers serving the Williamsport group. The reduction in rates from the Williamsport group naturally affected the rates from the Scranton group immediately to the east, which had theretofore been on the Philadelphia basis, and for competitive reasons the carriers serving that group established new rates based on 80 per cent of the New York-Chicago rates. Having reduced the all-rail rates from the Scranton group the carriers serving that territory determined likewise to reduce the rail-and-lake and rail-lake-and-rail rates, which also were on the Philadelphia basis. Their action was followed by corresponding reductions in the rail-and-lake and rail-lake-and-rail rates from the Williamsport group.

The established bases under which the all-rail rates from both groups have been maintained on percentages of the New York-Chicago rates have not been changed, but with the inauguration of the Great Lakes Transit Corporation, which succeeded the former railroad owned freight lines on the lakes, it was concluded that an opportune time had arrived to rectify what is alleged to have been a mistake in publishing rail-and-lake rates from those groups on lower bases than the Philadelphia or Baltimore rates. Accordingly, with the opening of navigation in the spring of 1916, application was made for authority to establish the new rates on less than statutory notice. This permission was denied and thereupon the carriers other than the respondents herein filed their tariffs containing the increased rates effective on 30 days' notice, and those rates remained in force throughout the season of navigation. The principal carriers serving the Scranton group published the former rates from that group and from the portion of the Williamsport group which they serve on three days' notice in order to provide rates on which the traffic could move with the opening of navigation, but immediately thereafter published the higher rates to take effect on statutory notice. These are the rates now under suspension and which the carriers seek to justify.

The first proposition urged in support of the rates under consideration is the absence of ocean-and-rail competition which is alleged to control the rail-and-lake rates from Philadelphia, Baltimore, and adjacent seaboard territory, and to determine the measure of the differentials under the all-rail routes. It is argued that the entire structure of rail-and-lake rates from Atlantic seaboard territory is governed by this ocean-and-rail competition and that such rates are therefore not a fair standard by which to judge the rail-and-lake rates from the Scranton and Williamsport groups. This contention need not be seriously considered here. When increases in the rail-and-lake rates from trunk line territory to points west of the Indiana-Illinois state line were under investigation in *Rates via Rail-and-Lake Routes*, 37 I. C. C., 302, 315, we found that the ocean-and-rail competition did not in fact influence the level of the rail-and-lake rates nor fix the differential relation between the rail-and-lake and the all-rail rates. This differential relation had been narrowed from time to time, but until 1909 the ocean-and-rail rates were higher than the rail-and-lake rates. Since that time a parity of rates has been maintained only during the season of navigation, at the close of which the ocean-and-rail rates have been restored to their higher basis.

The second proposition relied upon by the respondents, and the one to which they apparently attach the greatest weight, lies in a comparison with the rates from Pittsburgh, Pa. The rail-and-lake

rates from Pittsburgh and other points in central freight association territory are constructed by combination of the rates to and from the Lake Erie ports with Baltimore rates as maxima. The rates from Pittsburgh are now on the Baltimore basis, and it is argued that if it is reasonable to apply Baltimore rates from Pittsburgh, when the rail haul to the nearest port is only 132 miles, it can not be otherwise than reasonable to apply the same rates from Williamsport, for example, where the distance to the port is 219 miles. The protestants contend, on the other hand, that the Pittsburgh rates are excessive because equal in amount to the Baltimore rates, although the distance from Pittsburgh to St. Paul is 438 miles less. In *Lake-and-Rail Class Rates from Pennsylvania Points*, 26 I. C. C., 669, the respondents attempted to make the same increases in the rates from Williamsport which they here propose, and lesser increases from Scranton. We found the proposed increased rates had not been justified, and observed that the Pittsburgh rates might well bear some slight reduction. Subsequently, however, following *The Five Per Cent Case*, 31 I. C. C., 351, the rail components in central freight association territory were increased, and such of the class rates as theretofore were lower than the rates from Baltimore were increased to the Baltimore basis.

The only conditions now existent which did not obtain when the former proposed increase in the rates from the Scranton and Williamsport groups was under investigation in *Lake-and-Rail Class Rates from Pennsylvania Points*, *supra*, are the elimination of the railroad owned lake lines and the increases in certain of the rates from Pittsburgh. Neither of these new conditions can be deemed a sufficient justification for increasing the rates here involved. Moreover, during the 1916 season of navigation each of the respondents published joint rates from the Scranton and Williamsport groups to Duluth, St. Paul, and other points in connection with various lake lines other than the Great Lakes Transit Corporation on the basis of the rates which they are here attempting to increase. No explanation was made at the hearing or on brief for the application of higher rates in connection with the Great Lakes Transit Corporation than were maintained over other rail-and-lake routes nor did any representative of that carrier appear in support of the proposed increased rates.

Upon consideration of all the facts of record, we find that the proposed increased rates have not been justified. An order will be entered requiring cancellation of the schedules under suspension on or before April 2, 1917.

DANIELS, *Commissioner*, dissents.

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No. 8020.
LONG & BELLAMY BROS. COMPANY
v.
**CHARLESTON & WESTERN CAROLINA RAILWAY
COMPANY ET AL.**

Submitted May 3, 1916. Decided February 20, 1917.

Charges collected on carload shipments of potatoes, in barrels, from Seabrook, S. C., to New York, N. Y., not found to have been in excess of the lawful tariff charges. Complaint dismissed.

George W. Beckett for complainant.

E. C. Blanchard for Charleston & Western Carolina Railway Company.

E. E. Sheppard for Beaufort Transportation Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in truck farming near Seabrook, S. C. By complaint, filed April 10, 1915, it alleges that the rates charged by defendants for the transportation of eight carloads of potatoes in barrels from Seabrook to New York, N. Y., in May, 1914, exceeded the legal rates. Reparation is asked. The claim as to five of the shipments was withdrawn at the hearing. All rates are stated herein in cents per barrel.

Seabrook is a local station on the Charleston & Western Carolina Railway. Defendant Beaufort Transportation Company, hereinafter called the Beaufort Company, is a common carrier engaged in transporting truck, by boat, to Seabrook and other South Carolina points from numerous river landings in that section. The Charleston & Western Carolina Railway and its rail connections maintain joint rates from Seabrook to New York and other eastern destinations, and in conjunction with the Beaufort Company maintain joint rates to the same destinations from various river landings, including the one at which the potatoes in question originated. During the period involved the carload rate from Seabrook to New York was 65 cents, and the Beaufort Company's local rate from the various river landings to Seabrook, 10 cents. The joint through rate from the landings to New York was 70 cents, or 5 cents less than the aggregate of the rates to and from Seabrook. The shipments for

consideration were billed from the river landing and the joint through rate of 70 cents was charged.

Complainant, desiring to secure the application of the joint 70-cent rate, had, through its office, issued instructions to the Beaufort Company to haul the traffic and a boat was thereupon sent by that carrier to take care of the movement. The Beaufort Company does not own a sufficient number of vessels to handle this truck traffic during the whole of the shipping season, and it is and has been its practice to engage various individuals operating their own boats to assist it in moving this traffic during the rush season. For such services it has been its practice to settle with such parties at the end of the shipping season. For some reason complainant's representative at its farm saw fit to move the potatoes in question somewhat earlier than had been anticipated, and upon the request of this representative they were hauled to Seabrook by one of these boat operators by the name of O'Brien. O'Brien subsequently asserted a claim against complainant for these services based on a charge of 10 cents per barrel. Complainant did not pay the extra charge of 10 cents per barrel to the Beaufort Company. It is testified, however, that under threat of suit it settled O'Brien's claim, and the essential question here presented is whether or not the Beaufort Company participated in the transportation.

O'Brien had rendered services of this character for the Beaufort Company for a period of several years, and it appears there was a general understanding among the shippers that such transportation by him and on orders given exclusively to him was transportation by the Beaufort Company, and that to such movement the joint rates from the landings to final destination would apply, and he was engaged by complainant's representative under the belief that the joint rate of 70 cents from the river landing to New York would apply on the potatoes in question. Apparently, therefore, complainant now relies upon its settlement with O'Brien to support its present claim that the shipments were local to Seabrook and the 65-cent rate should have been applied beyond. We can not conclude, however, that the meeting of O'Brien's demands by complainant established the justice or legality of those demands. This party asserts that during the 1913 season he notified a number of shippers that he had discontinued hauling under contract for the Beaufort Company, but during the period in question he retained possession of that company's billing forms, issued to him for use in connection with such employment, and hauled traffic of other shippers for that carrier. The complainant's shipments were delivered to the rail carrier at Seabrook upon the Beaufort Company's billing, though complainant disputes the significance of this fact because such billing was made

out at Seabrook by a joint agent of the Charleston & Western Carolina Railway and the Beaufort Company. Nevertheless, complainant does not claim to have ordered that they be billed from Seabrook, but on the contrary, its agent testified that he directed billing from the landing. The Beaufort Company has received its division of the charges accruing on the shipments and complainant has not shown that O'Brien was not also paid for his services by that carrier. When complainant assumed to settle O'Brien's claims it did so at its own risk.

We find that the allegations of the complaint have not been sustained.

The amount of the charges paid on these shipments does not appear. The expense bills and the carriers' bills of lading are not in evidence. Defendants assert that one of the shipments was undercharged \$2.59. If so, the undercharge should be collected.

The complaint will be dismissed.

The attention of the defendants is called to the loose practice existing at Seabrook under which the Charleston & Western Carolina Railway apparently issues through billing on the presentation by any boatman of a bill of lading of the Beaufort Transportation Company without making the proper effort to determine whether this boatman is the duly authorized agent of the Beaufort Transportation Company. Measures should promptly be taken to insure the proper attention to these matters in the future.

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INVESTIGATION AND SUSPENSION DOCKET No. 839.¹
WALL BOARD RATING.

Submitted November 22, 1916. Decided February 13, 1917.

1. Proposed increased rates on wall board in central freight association territory found not justified.
2. Rates on "beaver board" from Buffalo, N. Y., to points in central freight association territory found to be unjustly discriminatory to the extent that they exceed the rates contemporaneously maintained on wood-pulp board. Carriers required to maintain rates on "beaver board" not in excess of the rates contemporaneously applicable on wood-pulp board. Reparation denied.
3. Proposed increased rates on wall board from and to certain points in Illinois, Wisconsin, and Missouri found not justified.
4. Proposed increased rates on wall board from Indianapolis, Ind., Milwaukee, Wis., and Chicago, Ill., to Ohio River crossings, Bristol, Tenn.-Va., and points taking the same rates, and to points the rates to which are made by combinations on Bristol, found not justified.
5. Schedules under suspension ordered canceled.

Cassoday, Butler, Lamb & Foster and Karl D. Loos for Cornell Wood Products Company.

A. O. Galloway for Philip Carey Manufacturing Company.

O. Van Brunt for General Roofing Manufacturing Company.

G. E. Griffith for Beaver Company.

C. S. Bather for Rockford Paper Box Board Company.

John M. Sternhagen for respondents in Investigation and Suspension Docket No. 839 and defendants in Docket No. 8623.

A. P. Humburg for respondents in Investigation and Suspension Docket No. 906.

D. P. Connell for respondents in Investigation and Suspension Docket No. 916.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases are related and will be disposed of in one report.

By schedules, filed to take effect May 15, June 1, and June 15, 1916, the respondents in Investigation and Suspension Docket No. 839 proposed to increase the rates on wall board between points in central freight association territory from 83.33 per cent of the sixth-class

¹ The proceeding also embraces complaint in No. 8623, *Beaver Company v. New York Central Railroad Company et al.*; Investigation and Suspension Docket No. 906, *Wall Board Rating* (No. 2); and Investigation and Suspension Docket No. 916, *Wall Board Rating* (No. 3).

rate to sixth class. No change was proposed in the present rates on wood-pulp board which are also 83.33 per cent of sixth-class. Upon protest by the Cornell Wood Products Company, of Chicago, Ill., with a factory at Cornell, Wis., and the Philip Carey Manufacturing Company, of Cincinnati, Ohio, the schedules were suspended until September 12, 1916, and later until March 12, 1917.

Wood-pulp board is the name generally applied to a commercial product of pulp wood. Single-ply wood-pulp board is made by reducing the pulp wood to fiber, rolling the fiber into thin layers, and combining from three to seven layers in one sheet. These boards have a variety of uses and include wall board, a substitute for lath and plaster. Wall board is composed of two or more plies of wood-pulp board or chip board held together by an adhesive. It is manufactured into sheets of various thicknesses. These sheets are from 32 inches to 48 inches wide and from 4 feet to 16 feet long. When shipped about 10 sheets of uniform size are packed flat in bundles weighing about 150 pounds each. The bundles are wrapped in heavy paper and securely bound by stout rope, steel bands, or buckles. Heavy jackets protect the corners of the sheets. The packages are shipped in ordinary box cars and 40,000 pounds can be readily loaded into a car. All wall board manufactured in central freight association territory is apparently made in practically the same manner. It competes with lumber and lath and plaster, which move at lower rates. The value of wall board ranges from \$36 to \$60 per ton, the value of the product manufactured by the Cornell Wood Products Company, the principal protestant, being \$57 a ton. The normal value of wood-pulp board is about \$40 per ton. Finished wood-pulp board, such as material for ice cream pails, milk bottle caps, and oyster pails, rated 83.33 per cent of sixth class, undergo the same initial process of manufacture as does wood-pulp board, but require additional labor to render them moisture proof. The present value of ice cream pail board is \$90 per ton; the normal value is from \$50 to \$60 per ton. The present values are abnormal, due to scant importations of chemical fiber. Some low-grade wall boards are less valuable than certain grades of wood-pulp board. Wood-pulp board is usually shipped in rolls and any damage to the ends in transit results in substantial loss. Protestants insist that it is difficult to differentiate between wood-pulp board and wall board.

Wood-pulp board, fiber board, strawboard, not corrugated or indented, and undecorated wall board made of the same material, are classified the same in official, western, and southern classifications, respectively. Various tariffs, naming commodity rates to western trunk line points, transcontinental territory, and to Texas points, provide rates on wood-pulp wall boards which are the same as the rates

applicable from and to the same points on pulpboard, fiber board, binders' board, box board, and like materials.

The Cornell Wood Products Company maintains that rates on wall board to points in central freight association territory are generally higher for equal distances from Cornell than the rates on the same product from Buffalo territory. It contends that any increase in rates from Cornell would aggravate the present rate situation, which protestant deems unreasonable and inequitable. Cornell is in western trunk line territory, and rates to central freight association territory from that point are made by combinations on Milwaukee, Wis., or Chicago. But the measure of the rates from Cornell is not in issue.

For a number of years, by exceptions to the official classification, respondents published rates on wall board, applicable in central freight association territory, based on 83.33 per cent of the sixth-class rate. In order to remove inconsistencies in rate adjustments tariffs were filed showing various increases and decreases in the rates on news print paper, printing paper, wrapping paper, paper boards, roofing paper, and a number of similar commodities between points in official classification territory. By schedules in one of these tariffs, filed to take effect May 27, 1915, it was proposed to increase the rates on wall board to sixth class. The operation of these schedules was suspended. In *Official Classification Rates on Paper*, 38 I. C. C., 120, we considered these various proposed increases, and for purposes of convenience the principal kinds of paper involved in the proceeding were grouped in the report under the following classes: (1) News print paper; (2) printing and wrapping paper; (3) paper boards, including strawboard, pulpboard, binders' board, and box board; and (4) building and roofing paper. In that case the only specific testimony introduced by respondents therein in support of the proposed increase on wall board was to the effect that "wall board is distinguishable from wool-pulp board or fiber board in that it is made up from those two articles in two or more layers and has gone through a further process of manufacture which has enhanced its value." The proposed rates on wall board were not separately mentioned in the report in that case, but were considered under the designation "board," as distinguished from paper. Our conclusion with respect to the proposed rates on boards, including wood-pulp board, binder's board, box board, chip board, paper stock board, and strawboard, was that the proposed rates had not been justified. We ordered the cancellation of all tariffs under suspension in that case and authorized the publication on short notice of tariffs in conformity with our findings therein.

Respondents insist that the failure specifically to mention wall board in the report in that case warrants the assumption that the pro-

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posed increase on that commodity had been justified, and reiterate the contention made in that case to the effect that wall board is a finished product, more valuable than ordinary wood-pulp board, and should properly be accorded higher rates. The extensive list of paper involved in that proceeding precluded detailed consideration of each kind in the report, a perusal of which shows that the grouping adopted included wood-pulp board, and necessarily embraced wood-pulp board used as wall board. Nothing is found in the present record to warrant a conclusion different from that announced in *Official Classification Rates on Paper, supra*.

We find that the proposed increased rates have not been justified, and an order will be entered requiring the cancellation of the suspended schedules.

The complaint in Docket No. 8623 was filed January 22, 1916, by the Beaver Company, a corporation engaged at Buffalo, N. Y., in the manufacture of wood-pulp wall board, commercially known as beaver board. The allegations are that the charges collected by defendants on various carloads of beaver board shipped subsequently to April 1, 1914, from Buffalo to numerous points in central freight association territory were unreasonable and unjustly discriminatory. Reparation is asked and the establishment of rates on beaver board in central freight association territory not in excess of those contemporaneously applicable on wood-pulp board. This case was consolidated and heard with Docket No. 839, and the testimony in that case also relates to this case. By an order entered on March 16, 1916, we permitted the Cornell Wood Products Company, of Chicago, to intervene in opposition to this complainant, its contention being that any reduction in rates to points in central freight association territory from Buffalo should be attended with corresponding reductions in the rates from Cornell.

For a long time prior to April 1, 1914, defendants maintained from Buffalo to points in central freight association territory rates on wood-pulp board in straight carloads or mixed with binders' board, box board, chip board, strawboard, wall plaster, plaster board, or stucco board, based on 83.33 per cent of the sixth-class rates. minimum 40,000 pounds. The commodity known as beaver board moved on these rates. On that date defendants provided specific rates from Buffalo to points in central freight association territory on beaver board in straight carloads, minimum 40,000 pounds, and later included wall plasterboard and upson board, trade names applied to other wall boards, based on the full sixth-class rates. But they continued to charge 83.33 per cent of the sixth-class rates on wood-pulp board and other wall boards not specifically mentioned in the tariffs.

Complainant observes that beaver board is worth \$60 per ton; that it is less susceptible to damage in transit than is wood-pulp

board in rolls; that competing wood-pulp wall boards not distinguishable by trade names, made by the same process and of like materials, shipped in the same manner, used for identical purposes, and of about the same value, move westbound from Buffalo in central freight association territory, and eastbound in the same territory from St. Louis, Mo., Chicago, and other competing points, at 83.33 per cent of the sixth-class rates; and urges that the present adjustment is unreasonable and results in unjust discrimination. The gist of the complaint is that complainant's competitors at other points in central freight association territory can ship wall board into Buffalo territory on a basis lower than that on which complainant's product moves in the opposite direction. The justification offered by respondents in support of the rates involved in Docket No. 839 was also offered with respect to the rate adjustment here in issue.

We find that defendants are practicing an unjust discrimination by imposing a higher charge for the transportation of beaver board than for other wood-pulp boards, and that for the future the rates on beaver board in central freight association territory should not exceed the rates contemporaneously maintained on other wood-pulp boards. There is no showing that complainant has been damaged by the exaction of the rates herein found to be unjustly discriminatory, and reparation will be denied. *Pennsylvania R. R. Co. v. International Coal Co.*, 230 U. S., 184; *Greenbaum Co. v. S. Ry. Co.*, 38 I. C. C., 715.

By schedules, filed to take effect September 1 and October 10, 1916, respondents in Docket No. 906 proposed to increase the carload commodity rates on plain or undecorated fiber board or wood-pulp wall board in carloads between Chicago, Rockford, and Waukegan, Ill., and Milwaukee, Wis., and St. Louis, Mo.; from Chicago, Rockford, Waukegan, and Milwaukee to Springfield, Ill.; from Lockport, Marseilles, and Morris, Ill., to St. Louis and East St. Louis; from Peoria, Marseilles, Morris, and Wilmington, Ill., to Milwaukee, Watertown, and Madison, Wis.; from Milwaukee to Sterling and Rock Falls, Ill.; from Beloit, Wis., to Peoria and other Illinois points; and from and to points taking the same rates. Upon protest by the Rockford Manufacturers' and Shippers' Association, of Rockford, the proposed schedules were suspended as to interstate traffic until December 30, 1916, and later until June 30, 1917.

Effective August 1, 1916, respondents operating in Illinois freight committee territory published commodity rates on wall board the same as those contemporaneously in effect on wood-pulp board not intended for use as wall boards. Respondents' only witness testified that the central freight association lines urged the cancella-

tion of the rates here in controversy on the ground that they considered them extremely low and for the further reason that their maintenance would likely embarrass the central freight association lines before the Commission. The withdrawal of these rates would restore the former class rates.

The Rockford Paper Box Board Company, in whose behalf the protest was filed, manufactures a four-ply chip board known as rock board, which is used as wall board, box board for covering wood-frame boxes, picture-frame backs, mirror-frame backs, and drawer bottoms. The proposed elimination of wall board from the items here under consideration would result in class rates on this commodity when shipped for purposes of wall covering which would be higher than the rates that would apply under the commodity tariffs when it is intended to use the board for some other purpose.

Respondents contend that the rate adjustment in Illinois committee territory is not fairly comparable with that prevailing east of the Indiana-Illinois line and insist, without supporting testimony, that the density of traffic is greater east of the state line. In the main, however, they rely upon the same defense as was advanced in Docket No. 839; in fact, the briefs in that case were filed as exhibits in support of the proposed action in this case. The remainder of the testimony is cumulative.

We find that the proposed rates have not been justified.

By schedules, filed to take effect September 12, 1916, the respondents in Docket No. 916 proposed to increase the carload commodity rates on wall board from Milwaukee and Chicago to Indianapolis, Ind., and Ohio River crossings, and from Milwaukee, Chicago, and Indianapolis to Bristol, Tenn.-Va., and points taking the same rates, and to points the rates to which are made by combinations on Bristol. The present rates are constructed generally on the basis of 83.33 per cent of the sixth-class rates, while the proposed rates are on the sixth-class basis. Upon protest of the Cornell Wood Products Company the proposed schedules were suspended until January 10, 1917, and later until July 10, 1917.

No testimony was adduced at the hearing. The case was submitted by the parties on the records in Dockets Nos. 839 and 8623. The items under suspension in this case are identical with those involved in Docket No. 839, except as to points of origin and destination, and following our conclusion in that case we here find that the proposed rates have not been justified, and an order will be entered requiring the cancellation of the schedules specified in the orders of suspension.

Appropriate orders will be entered.

No. 8127.

DANIEL V. COTTRELL ET AL.

v.

CHICAGO, TERRE HAUTE & SOUTHEASTERN RAILWAY
COMPANY.

Submitted January 8, 1916. Decided February 13, 1917.

1. Request for the extension to Perkins, Ind., of a transit arrangement on grain maintained at Terre Haute, Ind., not considered, as certain necessary parties are not named as defendants.
2. Charge for the reconsignment of grain at Terre Haute complained of was canceled after the complaint was filed.
3. Allegation that defendant failed or refused to furnish cars to complainants of the capacity desired, upon reasonable request therefor, not sustained. Complaint dismissed.

J. O. Piety for complainants.

W. F. Peter for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Daniel V. Cottrell and Bert Cottrell, copartners, dealing in grain and coal, with their principal office at Terre Haute, Ind., and a grain elevator located on defendant's line at Perkins, 1 mile south of Terre Haute. By complaint, filed June 28, 1915, they allege that defendant and other carriers provide a stop-over service on grain at Terre Haute for the purpose of cleaning, shelling, mixing, and storage, and permit reconsignments to final destinations without charge, but that defendant refuses to grant them similar transit and reconsignment services at Perkins; that defendant exacts a charge of \$2 per car for the reconsignment of interstate shipments on defendant's switch tracks in Terre Haute, although reconsigned within 24 hours after arrival, and that such charges are unreasonable and unjust; and that, whenever upon complainants' requisition for cars of a minimum capacity of 60,000 pounds for domestic shipment to the seaboard defendant has furnished cars exceeding that capacity, it has charged for such shipments on the basis of the amount of freight actually loaded above 60,000 pounds, but on all export shipments threatens to and will charge on the basis of 10 per cent less than the actual capacity of the car furnished, whether loaded to 60,000 pounds or not, and that such a charge is unjust and unreasonable.

Effective June 30, 1915, two days after the complaint was filed, the charge for reconsignment at Terre Haute was canceled, but subsequently a charge of \$5 was established to apply where the order is given after the car has been placed for unloading. In its amended answer and at the hearing defendant expressed willingness to establish a transit arrangement at Perkins on grain moving between points on its own line, of the same character as that in effect at Terre Haute. While at the time the complaint was filed shipments of grain could be reconsigned at Perkins at a charge of \$2 per car, effective June 30, 1915, the reconsigning charge was canceled, but subsequently a charge of \$5 was established, to apply where the order is given after the car is placed for unloading. No further transit provision appears to have been made, and, while good faith might impel defendant to give full effect to its expressed willingness, the record does not afford an adequate basis for an order to that effect.

Defendant also expressed willingness to join in providing for transit service at Perkins of the same kind and extent as that available at Terre Haute, and testified that some negotiations to that end had been had with its connections, without success. Inasmuch, however, as other interested carriers are not made parties defendant, no order could be entered on this record, even were a violation of the act established.

While it appears that complainants have been charged rates on grain for export on the basis of 90 per cent of the marked capacity of the car, it is not clear whether complainants had requested cars of a minimum capacity of 60,000 pounds in those cases in which larger cars were furnished.

The complaint will be dismissed.

No. 8432.
MONTGOMERY COTTON EXCHANGE
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted April 10, 1916. Decided February 13, 1917.

A tariff rule of the Louisville & Nashville Railroad provided that shipments of cotton originating on its line might be stopped at Montgomery, Ala., for concentration or compression, and reshipped at through rates from points of origin to final destinations, provided that shipments arriving at Montgomery during the 12 months' period ending August 31, 1915, were shipped out on or before that date. Complainant alleges that this rule as applied to certain shipments, the time limit upon which expired August 31, 1915, was unjustly discriminatory and asks for the extension of the transit period as to such shipments to a future date. The alleged discrimination has been removed and the record affords no basis for an order requiring the retroactive extension of the time limit as prayed. Complaint dismissed.

F. H. Elmore, jr., and Wilmer M. Flinn for complainant.
N. W. Proctor for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association of traders in cotton at Montgomery, Ala. By complaint, filed November 4, 1915, it alleges that it was being subjected to unjust discrimination in that during the period from August 31, 1915, to December 31, 1915, inclusive, cotton in interstate transportation shipped from points on lines other than defendant's to Montgomery and there compressed, could be reshipped to destinations on defendant's lines at the joint rates from points of origin to final destinations, while during the same period defendant did not provide a like transit arrangement on cotton originating at points on its line.

Most of the carriers serving Montgomery, including defendant, provide, and long have provided, in their tariffs for the application of through rates from points of origin to final destinations on shipments of cotton stopped at Montgomery for concentration or compression, provided that shipments arriving at Montgomery during the 12 months' period ending August 31 were or are shipped out on or before that date. This general practice is not attacked. It was testified that because of extraordinary conditions attending the marketing of cotton, occasioned in part by the European war, quantities

of cotton which had accumulated at Montgomery during the year ended August 31, 1915, were not shipped out prior to that date, and that prior to August 31, 1915, all of the carriers providing the transit arrangement at Montgomery, except defendant, extended the transit period in connection with such cotton to December 31, 1915. Defendant filed an application for permission to make a similar extension on shipments of cotton moving in and out of Montgomery on its line, but the application was denied because it was filed subsequently to August 31, 1915, on which date the original transit period expired.

A small portion of the cotton which could not move out of Montgomery at the balance of the through rate from points of origin because of defendant's failure to extend the transit period has been shipped from that point and was charged for at the local rates to and from Montgomery, which charges were higher than the charges that would have accrued at the through rates contemporaneously in effect. But the great bulk of such cotton was, at the time of hearing, being held at Montgomery pending our decision herein. The real relief sought by complainant is an extension of the transit period named in the tariff so that this cotton might move from Montgomery at the balance of the through rate from point of origin to final destination. This would involve the reinstatement of a transit right which had expired and the extension of the transit period for considerably more than a year. Upon this record we can not accord the desired relief.

Complainant stated that in case the transit period should not be extended it desired reparation on shipments of cotton affected thereby which might, in the future, move out of Montgomery at the local rates. This is a matter which can not be considered at the present time. Reparation is also asked on the shipments which have moved at the local rates to and from Montgomery. The record contains no reference to specific shipments, and neither the consignees nor the consignors of the shipments which have moved at the Montgomery combinations are parties to this proceeding. No reparation could therefore be awarded on this record. As any unjust discrimination which may have existed between August 31, 1915, and December 31, 1915, has now been removed, a finding with respect thereto is unnecessary.

An order will be entered dismissing the complaint.

43 I. C. C.

No. 8486.
KELLEY-HOW-THOMSON COMPANY
v.
NORTHERN PACIFIC RAILWAY COMPANY.

Submitted April 12, 1916. Decided February 13, 1917.

Rate charged on a carload of prepared roofing felt and building paper, transported interstate from Minneapolis, Minn., to Duluth, Minn., found to have been unreasonable and reparation awarded.

G. Roy Hall for complainant.

Charles Donnelly for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the hardware business at Duluth, Minn. By complaint, filed November 29, 1915, it alleges that the rate charged by defendant for the interstate transportation of a carload of prepared roofing felt and building paper from Minneapolis, Minn., to Duluth, on February 3, 1915, was unreasonable. Reparation is asked. Rates are stated herein in cents per 100 pounds.

The shipment weighed 48,800 pounds, and moved by way of defendant's line through a portion of the state of Wisconsin. Charges were collected thereon in the sum of \$81.01 at the fifth-class rate of 16.6 cents. Complainant contends that the rate charged was unreasonable to the extent it exceeded 8 cents.

Prior to the time the shipment moved a commodity rate of 7 cents applied on building and roofing paper by way of defendant's line and also over the lines of other carriers, and this rate had long been in effect. When the Minnesota rate legislation known as the Cashman act became effective this and other commodity rates were canceled. Subsequently, in the general readjustment, a commodity rate of 8 cents was established from Minneapolis to Duluth on building and roofing paper in carloads, applicable by way of all lines except that of the defendant. Since March 14, 1915, the 8-cent rate has applied by way of defendant's line. The shipment in question moved during the period when no commodity rate was in effect.

The distance from Minneapolis to Duluth over the route the shipment moved is 164.6 miles. The rate on roofing paper from Eau Claire, Wis., to Duluth, 157.6 miles, is 8 cents; from Ladysmith, Wis., to Minneapolis, 182 miles, 7 cents; and from Marshfield, Wis.,

to Milwaukee, Wis., 185 miles, 7½ cents. The Minnesota distance rate for 155 miles is 8.6 cents. The rate charged yielded 2.02 cents per ton-mile, more than twice as much as the ton-mile yield of any of the rates above shown. Defendant admits that the rate charged was unreasonable to the extent that it exceeded 8 cents and is willing to make reparation accordingly.

We find that the rate assailed was unreasonable to the extent that it exceeded a rate of 8 cents per 100 pounds. We further find that complainant made the shipment as described and paid and bore the charges thereon at the rate herein found to have been unreasonable; that it was damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rate of 8 cents per 100 pounds; and that it is entitled to reparation in the sum of \$41.97, with interest.

An appropriate order will be entered.

No. 8527.

L. G. GRAFF & SON

v.

PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted March 21, 1916. Decided February 5, 1917.

The failure of the Pennsylvania Railroad Company to provide for reimbursement to shippers of the amount which insurance charges on grain stored in elevator B at Girard Point, Philadelphia, Pa., exceeded similar charges which would have been incurred had the grain been stored in the new concrete elevator at the same point, found, under the circumstances shown of record, to result in undue prejudice and disadvantage to complainants. Reparation awarded.

*Robert D. Jenks and William A. Glasgow, jr., for complainants.
Henry Wolf Biklé for defendants.*

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Elevator B, now dismantled, was located at Girard Point, Philadelphia, Pa., and was operated by the Girard Point Storage Company, a subsidiary of the Pennsylvania Railroad Company. It was

not of fireproof construction, and for the insurance of grain stored therein shippers paid the insurance companies \$1.85 and higher per \$100 per annum. On July 1, 1914, this elevator was closed and a new concrete grain elevator was put into service. The insurance companies fixed the rate of fire insurance on grain stored in the latter at 25 cents per \$100 per annum, and for competitive reasons the Pennsylvania and other carriers serving Philadelphia, Baltimore, Md., and other Atlantic ports, provided by tariff either for the reduction of their insurance rates or for the reimbursement to shippers of insurance paid in excess of 25 cents per \$100 per annum. Since July 1, 1914, the Pennsylvania itself has furnished such insurance at its Baltimore elevator at the 25-cent rate.

Following the outbreak of the European war the congestion of cars at Philadelphia and other ports became serious, and the Pennsylvania, desiring to relieve the situation by the prompt release of its equipment and finding the capacity of its elevators at Philadelphia insufficient, reopened elevator B and published, effective September 18, 1914, the following provision:

The Pennsylvania Railroad Company will, through the Girard Point Storage Company, equalize the fire insurance rate on grain received over the Pennsylvania Railroad, handled through or stored in elevator B, Girard Point, Philadelphia, Pa., with the rate charged on grain in the new concrete elevator at Girard Point, Philadelphia, Pa.

This provision was indefinite in that the rate of insurance at the new elevator was not stated and, upon criticism by this Commission, the following provision was substituted, effective November 15 of that year:

Fire insurance on all grain in the elevators at Girard Point, Philadelphia, Pa., will be charged for the period of storage based on an annual rate of 25 cents per \$100.

This tariff was in error, however, as it was not the intention of the Pennsylvania to furnish insurance, and on February 23, 1915, an absorption provision was made effective which was the same as that contained in the tariff of September 18, except that there was added the words "which is at an annual rate of 25 cents for \$100."

The complainants, L. G. Graff and H. D. Irwin, doing business under the name of L. G. Graff & Son, are engaged in the buying and shipping of grain, principally for export, at Philadelphia. By complaint, filed December 15, 1915, they ask reparation on grain shipped by them to Philadelphia and stored in elevator B during the period between November 15, 1914, and February 23, 1915, alleging that the failure of the Pennsylvania to make reimbursement to the extent of the difference between the insurance paid by them to the insurance companies and the charge for such insurance at the rate of 25 cents

per \$100 per annum, in accordance with the intent of the tariff, is unjust and unreasonable and in violation of sections 1, 3, 6, and 15 of the act to regulate commerce.

In its answer the Pennsylvania denies that there has been any willful imposition of unreasonable charges, since it was its intention to properly provide for the reimbursement claimed, and joins with the complainants in asking approval by this Commission of the reimbursement asked.

The amount of insurance paid by the complainants on grain moving to Philadelphia via the Pennsylvania and stored in elevator B during the period stated, at the rate of \$1.85 per \$100 per annum, was \$7,810.69. Based on the 25-cent rate it would have amounted to \$1,055.49. The difference is \$6,755.20.

The tariff provision quoted did not properly provide for the reimbursements which it was the intention of the Pennsylvania to make. Generally the equalization of fire insurance charges would be for competitive reasons, and, without expressing any opinion as to the duty of carriers under other circumstances, we are of opinion and find that under the circumstances of this case the failure of the Pennsylvania to properly provide for the equalization of fire insurance rates on grain stored in elevator B with corresponding rates at the new elevator at Girard Point subjected complainants to undue prejudice and disadvantage and unduly preferred shippers whose grain was stored in the new elevator, and that complainants have been damaged in the sum of \$6,755.20. An order awarding reparation in that sum, with interest, will be entered.

48 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 857.
BOSTON-NEW YORK PROPORTIONAL RATES (No. 2).

Submitted December 13, 1916. Decided February 12, 1917.

The proposed cancellation of proportional rates between New York, N. Y., and points in southeastern New England, applicable on traffic handled south of New York by coastwise steamship lines, not found justified.

Charles M. Sheafe, jr., and Parker McCollester for respondents.

L. H. Kentfield for New York, New Haven & Hartford Railroad Company and New England Steamship Company.

G. W. Sterling for Eastern Steamship Corporation.

R. Walton Moore and Edward H. Hart for Clyde Steamship Company, Ocean Steamship Company of Savannah, and Old Dominion Steamship Company.

Fred H. Wood for Southern Pacific Company (Atlantic Steamship lines.)

W. H. Chandler for Boston Chamber of Commerce.

Frederick C. Rising and W. H. Chandler for Boston Wool Trade Association.

Alton E. Briggs for Boston Fruit & Produce Exchange.

Edward C. Southwick for Providence Chamber of Commerce.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

For many years the New England rail and water lines have maintained proportional rates between New York, N. Y., and southeastern New England applicable on traffic handled south of New York by coastwise steamship lines. In *Boston-New York Proportional Rates*, 38 I. C. C., 61, they attempted to cancel these rates in connection with lines operating through the Panama Canal, but at the hearing it was stated that they were not prepared to justify the discrimination which might result, and we held that the proposed increased rates had not been justified. By tariffs filed to become effective in June, 1916, it is proposed to cancel them altogether, leaving only the local rates in effect. Said tariffs have been suspended by us until April 3, 1917.

The proportional or transshipment rates, which will be referred to hereinafter as the proportional rates, apply between New York and points on the Central Vermont Railway from New London, Conn., to Palmer, Mass.; points east of the Central Vermont on lines

of the New York, New Haven & Hartford Railroad; and points on the Boston & Albany Railroad east of Springfield, Mass. They apply between New York and the New Haven points via New Bedford and Fall River, Mass., Providence, R. I., and New London, Conn., in connection with the New England Steamship Company, which is owned by the New Haven; via all rail between New York and Boston and Providence and their suburbs; and via the New England Steamship Company between New York and the Long Island Sound ports named. The Eastern Steamship Corporation proposes to cancel the same scale of proportionals between New York and Boston as is applicable via the all-rail and rail-and-water routes, and also a somewhat higher scale between New York and Portland, Me. From and to the Central Vermont points the rates are in effect via New London in connection with the Central Vermont Transportation Company; and from and to the Boston & Albany points via both the rail and water route in connection with the Central Vermont and the all-rail route in connection with the New York Central.

Generally speaking, the Central Vermont and Boston & Albany railways form the western and northern boundaries of the territory described. Within these lines all interior points are local to the New Haven and consequently the first or last stage of transportation to or from the south or west is necessarily over New Haven rails. There are three ways in which such traffic may move: Via the all-rail routes; via New York and the coastwise lines; and via Boston or Providence in connection with the coastwise lines serving those ports. The New Haven owns the New England Steamship Company, and its application under section 5 of the act to regulate commerce as amended by the Panama Canal act for permission to continue its operation of the lines of said company has been fully heard and now stands submitted on our docket. The New Haven also still holds an interest in the Eastern Steamship Corporation, which, however, it has been ordered to dispose of by a decree of the United States district court, southern district of New York.

Rates are stated herein in cents per 100 pounds.

The proportional rates have been in effect 30 or 35 years, and with the exception of certain increases in 1908, and of course readjustments from time to time in commodity rates, have been maintained since without substantial change. The record contains no definite testimony as to their history, but it is natural to assume that they were established in order that the various routes between Boston and New York might compete, in connection with the coastwise lines serving the latter port, with the coastwise lines operating between Boston and Providence and south Atlantic ports, or in order that manufacturers in eastern New England might compete on a substantial

equality of rates with manufacturers located in New York and other points. At the time they were established the several rail-and-water routes between Boston and New York were competitive with each other. The coastwise lines, it should be borne in mind, fixed the measure of rates between the northern ports and the south, and competition between the all-rail routes and routes in connection with the various coastwise lines resulted in fixing uniform differentials in favor of the latter in rates between a large portion of the south and west and the northern ports and interior eastern points, including all points served by the New Haven. From Boston, Providence, and New York to the southeast these differentials are on a scale of 12 cents, first class, and from interior points, with which are included New Bedford, Fall River, and New London, they are on the following scale:

Class.....	1	2	3	4	5	6
Differential	4	3	2	2	1	1

The New Haven participates in joint through all-rail rates between its stations and various sections of the country, and these rates are not made by combination on New York, but with relation to, sometimes the same as, the New York rates. The New Haven also concurs in joint through rates in connection with the coastwise lines, generally somewhat lower than the all-rail rates, from the south and west generally, but in the reverse direction it has declined to give such concurrence. Other lines serving interior eastern territory also took the same course, and the result has been that the coastwise lines, in order to compete with the all-rail routes, have published through rates from interior points without the concurrence of the eastern lines, the Commission requiring, however, that their tariffs contain a provision that the local or proportional rates of the eastern lines will be absorbed. No proportionals have been established to or from New Haven territory west of the Central Vermont, where the geographical conditions, and also the competitive conditions, are substantially different from those east of said railway; consequently the coastwise lines absorb the full local rates of the New Haven.

The uses of the proportional rates are three. They are used in combination with rates of the coastwise lines in constructing through rates to and from Pacific coast points via the Panama Canal and to and from Gulf ports and southern and western points through the Gulf ports; also on export and import traffic to and from South America, Mexico, and the West Indies. In all such cases the proportionals affect the measure of the through charges and are paid by the shipping public. On northbound traffic originating in sections of the south or west from which through rates are in effect in connection with the coastwise lines the proportionals are merely the

divisions accruing to the lines east of New York. On traffic in the reverse direction moving on through rates published by the coastwise lines, the proportional rates are in effect divisions, although, as stated, the respondents decline to concur in joint rates.

The Boston & Albany, it should be stated, did not publish the proportional rates until about 1905, and then took that action to meet the competition of the lines which had them in effect to and from competitive points.

The main protests come from several of the principal coastwise lines which reach New York, namely, the Southern Pacific Company (Atlantic Steamship lines) generally referred to as the Morgan lines, the Clyde Steamship Company, the Mallory Steamship Company, the Ocean Steamship Company of Savannah, and the Old Dominion Steamship Company. Their objection is that the divisions or arbitraries which they will have to pay to the New England lines out of the through rates published by them will become excessive, and in some cases so great as to ultimately compel increases in the through rates or a withdrawal from the business. Various shipping interests in and near Boston protest because of the resultant increases in the combination rates, and because they fear that any increase in the proportionals will eventually entail upon them the payment of higher rates to and from points covered by the through tariffs of the coastwise lines.

On classes the proportional rates are substantially lower than the local class rates, but the commodity rates carried in the proportional tariffs are generally about the same as the local commodity rates. Taking New Haven points as illustrative, there are three scales of proportional class rates. Boston and the Sound ports are on a parity and take the lowest scale. Points on the lines from Framingham to Lowell and Fitchburg, Mass., points on certain branch lines, and points on Cape Cod take the highest of the three scales. The intermediate scale applies from all other New Haven points in the territory described. The three scales are as follows:

1	2	3	4	5	6
18	16	15	13	12	11
22	20	19	18	17	15
27	25	23	21	20	18

The cancellation of the proportionals would leave only the local rates in effect. The port to port rates of the New England Steamship Company and Eastern Steamship Corporation are not on file with this Commission, and therefore the cancellation would leave no rates in effect on traffic now transported by these water lines from or to the Sound ports and Boston on rates made by combination on New York.

The proportionals include transfer to or from the piers of the coastwise lines, which has generally amounted to 4 cents per 100 pounds on less than carloads and 3 cents on carloads. Since the hearing, however, the general freight agent of the New Haven has advised that the transfer companies in New York have increased their charges on less than carloads to 5 cents per 100 pounds. The local class rates of the New Haven do not include transfer of less-than-carload shipments; therefore in stating the increased rates which would result from the cancellation it is necessary to add to the first four classes 5 cents per 100 pounds, which is not covered by any tariff on file with the Commission. Between New York and Boston, for instance, the rates and the amount of the increase to the southern steamship piers, so figured, would be as follows:

Class	1	2	3	4	5	6
Rate.....	40	35	30	25	17	15
Increase.....	22	19	15	12	5	4

The only statement in the record as to the local rates formerly applicable via the Eastern Steamship Corporation between New York and Boston is that they were lower than the all-rail or rail-and-water rates by a scale beginning with 5 cents, first class. It was stated at the argument that since the hearing the water line named has increased its local rates to equal those applicable via the all-rail and rail-and-water routes. The local water rates of the New England Steamship Company between New York and the Sound ports are somewhat lower than the all-rail rates, but the record does not show to what extent. The Boston-New York local rates are applicable between New York and Lowell, which takes the 27-cent scale of proportionals, and Quincy, which takes the 22-cent scale; therefore the increases to those points would be as follows:

Class	1	2	3	4	5	6
Lowell.....	13	10	7	4	¹ 3	¹ 3
Quincy.....	18	15	11	7	0	0

Willimantic, Conn., 30 miles north of New London, takes the 22-cent scale of proportionals, but the same locals as are applicable between New York and New London via the all-rail route. The rates and increases to and from Willimantic would be as follows:

Class	1	2	3	4	5	6
Rate.....	33	29	25	20	13	12
Increase	11	9	6	2	¹ 4	¹ 3

As stated; we have not before us the New York-New London water rates, which are somewhat lower than the all-rail rates.

As indicated, the cancellation of all proportional commodity rates is also proposed. It may not have been intended, but owing to a

¹ Decrease.

tariff complication there apparently would be increases in the any-quantity rates on cotton piece goods via the routes of the New Haven system of 6 cents to and from Boston and of $1\frac{1}{2}$ or 2 cents to and from several other points. Some mention was made of increases proposed in rates on tropical fruits and vegetables which move to Boston in small quantities, but there is no definite testimony with reference thereto. On less-than-carload traffic covered by commodity rates there would be an additional charge in some cases of 5 cents per 100 pounds, for the reason that the present or proportional rates include the cost of transfer to or from the piers of the coastwise lines, while the locals do not. With these exceptions, and the rates on wool and mohair, it appears that in effect there would be substantially no change in commodity rates, because generally the present proportional commodity rates are the same in amount as the local rates.

As no through rates are published on wool and mohair received by respondents from the coastwise lines at New York the proportional rates, which apply to consuming points in all of the New England states, are paid by the shipping public and are not absorbed by the coastwise lines. Rates are named for carloads and for less than carloads, but in many cases such rates are the same regardless of the quantity shipped. They apply on either scoured wool or wool in the grease, but vary according to whether shipped in sacks or bales. Some apply all rail, some water and rail, and others all water. This traffic originates principally in Texas, but some comes from California through the Panama Canal. The movement through New York is estimated at 10,000,000 pounds annually and the larger part of it goes to Boston, where it is graded and shipped out to manufacturing points. The protests come from dealers at Boston.

The cancellation of these rates would bring into application the local class rates governed by the New England lines' exceptions to the official classification. This issue names ratings on scoured wool in sacks, cases, or bales, compressed or uncompressed, of third class, minimum weight 10,000 pounds, and on wool in the grease, in sacks or bales, compressed or uncompressed, and mohair in sacks, bales, barrels, or boxes, of second class, in less than carloads, and fourth class in carloads, minimum weight 16,000 pounds. The carload ratings stated are subject to rule 5 (c) of the official classification, which provides for the movement of the overflow of a carload at the carload rate and which ordinarily is not applicable on articles of this character. These ratings represent reductions from the official classification bases. The official classification provides for wool not otherwise specified, in sacks or bales, first class in less than carloads, and second class in carloads, minimum weight 10,000 pounds for a stand-

ard car, with graduated minima for larger cars, and for mohair provides first-class ratings on any quantity.

The movement is almost exclusively in carloads. There is no testimony respecting rates to points other than Boston. To that point the present carload rates, including transfer from the piers of the coastwise lines, applicable via all routes, are 14 cents on shipments in bales and 18 cents on shipments in sacks. Should the proposed schedules become effective, the carload rates, including the cost of transfer, will be, via both the all-rail or rail-and-water routes, 20½ cents on wool in the grease and on mohair, and 27 cents on scoured wool.

Respondents take the position that the present wool and mohair rates are unduly low, and say that the bases proposed, which are less than the official classification bases, are unquestionably reasonable. They make reference to our report in *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684, where it is said:

Wool is classified under official classification as first class, l. c. l., second class, c. l., with a minimum of 10,000 pounds. We have held that under the western classification western wools should be classified as second class, l. c. l., and fourth class, c. l., but it must be remembered that the conditions under which wool is transported in the west are materially different from those prevailing east of the Mississippi River.

Western wool contains a much larger per cent of dirt than does eastern wool, so that as offered for shipment, even though the wool when scoured may have the same value, the western wool is less valuable than the eastern.

The same fact renders the western wool heavier than the eastern. The western sack when of the same size weighs approximately one-third more than the sack of eastern wool. It appeared that as western wool is actually sacked it can be readily loaded to 24,000 pounds in a 36-foot car, while the testimony shows that eastern sacked wool will not load more than 15,000 or 16,000 pounds to the same car. Upon the basis of the classification established by us for wool, under western classification, we are of the opinion that this commodity under the official classification is properly classified as first class in less-than-carload lots; in carload lots it might well take the third-class rate, with a minimum of 16,000 pounds.

The ratings proposed to be made effective on carloads are, as stated, third class on scoured wool and fourth class on wool in the grease and on mohair. These ratings are proposed to be applied in connection with the local rates.

In connection with the local class rates of the New Haven, it was testified by respondents' chief witness that they were increased in the upper and reduced in the lower classes following a readjustment by the Boston & Maine Railroad, made subsequent to our report in *The New England Investigation*, 27 I. C. C., 560. A large per cent of traffic from southeastern New England is in less-than-carload lots and in the absence of commodity rates takes the higher class

rates. The Boston-New York local rates, it was further testified by the same witness, are limited in amount by the rates between Boston and the first group west of the Hudson River and are not on a water competitive basis.

Several arguments have been advanced by the respondents in support of the proposed cancellation. The first is that the question is one of divisions between carriers, in which the shipping public has no interest. This, of course, is true as to traffic moving on joint through rates, and the question before us is not one of divisions. As to traffic moving on rates published on the nonconcurrence plan the respondents seek, by this contention, to secure such advantages as come from the publication of through rates, while at the same time declining to accept the responsibilities or liabilities incident thereto. They do not concur in the southbound rail-and-water rates, and should there be an attempt to raise or cancel them or a complaint of unreasonableness or of unjust discrimination between points or commodities in connection with them, the respondents would not be a party to the tariffs, which fact might necessitate procedure, in order to properly dispose of the questions arising under such circumstances, which would not be necessary if the New Haven were a concurring carrier. The nonconcurrence rates applicable on southbound traffic from the interior east are the only exception to our requirement that every necessary carrier to transportation under through rates must file its concurrence therein and be shown in the tariffs as a concurring line, and so far as the respondents are concerned their publication does not change the nature of the proportional rates here in issue, which are rates legally published and filed as applicable to certain interstate traffic. The contention that the matter is one of divisions also ignores altogether traffic moving on through charges based on New York combination, on which there would be substantial increases in case the proposed cancellation should be permitted.

Neither the respondents nor the protesting lines, it appears, are satisfied with the present basis of division of through charges; they both state that the sections east and west of the Central Vermont should be treated alike but differ as to the basis. The respondents demand their full locals east of New York on all New England traffic moving via the coastwise lines, whereas the protesting lines are dissatisfied because they have to absorb the full locals between New York points on respondents' lines east of the Central Vermont. If the respondents desire to make it a question of divisions and have it passed upon by this Commission, they should present it in such a way that we can exercise the authority conferred upon us by the act to regulate commerce. Nothing herein said should be regarded as an expression of opinion as to the basis of divisions.

Respondents have no proportional rates between southeastern New England and Boston, and one of the points urged by them is that the proposed cancellation would place Boston and New York on a substantial parity. Their action, if taken for that reason, is contrary to past policy. The steamship service from New York is superior to that from Boston, and representatives of Boston interests state that while they would welcome any proposition having for its object the upbuilding of Boston as a port, they regard the present rates and routes via New York in connection with the coastwise lines as absolutely essential to their commerce. Point is also made that the Boston & Maine now maintains no proportionals to New York. That line, however, does maintain proportionals to and from Boston on a basis of approximately 70 per cent of its local rates. A glance at the map will indicate that from New Haven points the natural rail-and-water route to the south and west is through New York rather than Boston, the New Haven securing its maximum haul to the former port; whereas the lines of the Boston & Maine are almost entirely north of Boston. The natural route of the Boston & Maine to New York is in connection with the New Haven, and there is no testimony as to which carrier was responsible for the cancellation of the proportional rates formerly maintained between New York and Boston & Maine points.

The rail lines serving territory west of the Hudson River and east of the Buffalo-Pittsburgh line have taken the same stand as the respondents with reference to through southbound rates, and the coastwise lines have to absorb the entire or almost the entire amount of the local rates to and from New York. Respondents contend that they should be treated by the coastwise lines on the same basis as the lines serving the territory above described. This might be of some weight were the question before us one of divisions between carriers. In this proceeding the respondents protested against the introduction of comparisons between their proposed rates and the divisions accepted by them of through all-rail rates on traffic originating at or destined to southeastern New England.

It was also testified that the proposed cancellation would remove fourth section violations. The testimony indicates no departures from the requirements of the fourth section in through rates published on either the concurrence or the nonconcurrence plan, and the only departures indicated in connection with the proportionals is in rates from Boston and Providence to New York lower than from intermediate points.

In considering respondents' contentions it should not be overlooked that an attempt was first made to cancel the proportionals only in connection with lines operating through the Panama Canal.

On this point respondents' brief, in referring to a statement by their principal witness, states as follows:

The greater portion of the transshipment business at New York is handled by the lines operating through the Panama Canal (p. 32). Consequently in the expectation of that traffic being assumed (resumed), the proposed change was made (p. 33).

Briefly stated, the situation appearing of record is substantially as follows: The major portion of the territory from or to which the proportional rates apply is served only by the New Haven and its subsidiary water lines, and this carrier now desires to assess full local rates on interstate traffic moving in connection with the coast-wise lines south of New York. The respondents' testimony was largely argumentative. The competing water line between New York and Boston, the Eastern Steamship Corporation, presented no testimony whatsoever, and the testimony offered by the New Haven did not refer specifically to the rates of the New England Steamship Company. In so far as the question is one of divisions it is not properly before us and in so far as it is an attempt to increase rates duly established and in effect on interstate transportation we are of opinion and find, that the burden cast by the statute upon the respondents has not been sustained. An order requiring the cancellation of the suspended tariffs will be entered.

43 I. C. C.

No. 8470.

SELDOMRIDGE GRAIN COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted July 23, 1916. Decided February 20, 1917.

Charges collected on a carload of corn from Trinidad, Colo., to Raton, N. Mex., found to have been legally applicable and are not shown to have been unreasonable. Complaint dismissed.

C. B. Seldomridge for complainant.

B. F. Williams for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the flour, grain, and hay business at Colorado Springs, Colo. By complaint, filed November 9, 1915, it alleges that the charges collected by defendant on a carload of sacked corn shipped from Trinidad, Colo., to Raton, N. Mex., in January, 1915, were unjust and unlawful by reason of the minimum weight applied. Reparation is asked.

The shipment originated at Wallace, Nebr., and moved thence under a joint through rate published by the Chicago, Burlington & Quincy Railroad Company from Wallace to Trinidad with transit at Colorado Springs. It was unloaded and stored in transit at Colorado Springs. On January 18, 1915, complainant reloaded and billed the shipment to itself at Trinidad and delivered it to the Denver & Rio Grande Railroad at Colorado Springs, which road, in compliance with complainant's instructions, turned it over to defendant at Trinidad. Complainant prepared and forwarded a new bill of lading to defendant's agent at Trinidad directing movement of the shipment from that point to Raton. The corn weighed 40,000 pounds and moved to destination in an 80,000-pound marked capacity car into which it had been loaded at Colorado Springs. There was no joint through rate from Wallace or Colorado Springs to Raton. The local rate legally applicable to the movement from Trinidad was 10 cents per 100 pounds, carload minimum "4,000 pounds less than marked capacity of car," and charges were accordingly collected upon a weight of 76,000 pounds. No complaint is made of the measure of the rate charged or of the minimum weight provision.

Defendant's tariffs provided that when a car of the size ordered by a shipper could not be furnished and for convenience of the carrier a larger car was furnished, the larger car might be used on the basis of the minimum weight applicable to the car ordered, or on basis of actual weight of shipment if greater than such minimum.

Complainant contends that the charges were unjust and unlawful to the extent that they exceeded the charges that would have accrued at the legal rate and actual weight of 40,000 pounds. This contention is made apparently upon the theory that the notation of the actual weight on the bill of lading covering the movement from Trinidad was sufficient to put defendant on notice that a smaller car was desired and to bring the transaction within the terms of the tariff provision above referred to. Complainant stated that on past shipments moving under circumstances similar to those here involved it had been its practice to obtain the benefit of that tariff provision by making an appropriate note on the bill of lading covering the transportation from Trinidad respecting the sized car desired. It was admitted, however, that no such notation was made on the bill of lading covering this car.

We find that the charges were assessed in accordance with the tariff and are not shown to have been unreasonable. An order will be entered dismissing the complaint.

43 I. C. C.

No. 7942.

J. S. STEARNS LUMBER COMPANY ET AL.

v.

CHICAGO & NORTH WESTERN RAILWAY
COMPANY ET AL.

Submitted January 31, 1916. Decided February 13, 1917.

Rates on lumber in carloads from Odanah, Wis., to points in other states not shown to have been unreasonable. Complainants not shown to have been damaged by the unjust discrimination or the undue prejudice alleged. Complaint dismissed.

A. E. Solie for complainants.

C. C. Wright and *Robert H. Widdicombe* for defendants.

J. F. McWilliams for Baltimore & Ohio Railroad Company.

S. L. Strauss for Grand Trunk Western Railway Company.

W. C. Douglas for Michigan Central Railroad Company and New York Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are corporations engaged in the manufacture of lumber at Odanah and Rhinelander, Wis. By complaint, filed December 24, 1914, they allege that the rates charged on certain carloads of lumber shipped from Odanah to points in Michigan, Indiana, Ohio, Pennsylvania, West Virginia, Kentucky, and New York during the period from February 17, 1913, to July 31, 1914, inclusive, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent of 1 cent per 100 pounds. Reparation is asked. Rates are stated in cents per 100 pounds.

Odanah is a local point on the Chicago & North Western Railway, hereinafter called the North Western, in northern Wisconsin, 9.4 miles east of Ashland, Wis. The rates assailed are joint commodity rates, ranging from 17 cents to 27 cents, and apply by way of Manitowoc, Wis., Milwaukee, Wis., and Chicago, Ill., hereinafter called the lake ports.

Eastbound lumber rates from Wisconsin are and long have been made under a group adjustment. During the period the shipments moved and for a long time prior thereto, Odanah was included in

what is known as the Hurley, Wis., group. Prior to February 15, 1909, no joint rates applied on lumber from and to the points involved. Through rates were constructed by adding local or proportional rates to the lake ports and proportional rates beyond. When the rates from any point of origin to all the lake ports were not the same the proportionals from the lake ports were so fixed as to equalize the through rates by way of any of such ports. On the date named joint rates equal in amount to the former through rates were established, and as their publication removed the necessity for proportional rates east of the lake ports, those rates were canceled. Prior to the publication of the joint rates and prior to February 17, 1913, the rate from the Hurley group was 12 cents to Chicago and 11 cents to Milwaukee and Manitowoc. Defendants state that their former through rates were made by adding the normal proportional rates from the lake ports to the rates to Milwaukee or Manitowoc and, that in order to equalize the through rates by way of Chicago, it was necessary to shrink the normal proportionals from Chicago to the extent of 1 cent. On February 17, 1913, at the request of one of the complainants, the rate from the Hurley group to Chicago was reduced to 11 cents, but no change was made in the joint rates to the east. Subsequently, on August 1, 1914, upon representations by the same complainant that the Minneapolis, St. Paul & Sault Ste. Marie Railway had made certain reductions in its rates from points in the vicinity of Odanah to points in central freight association territory, the North Western reduced the joint rates from the Hurley group 1 cent. This resulted in the consolidation of the Hurley group with the Rhinelander group, which is south of the Hurley group, and from which the rates were 1 cent less than the rates from the Hurley group. The North Western testified that this action was taken without proper consideration and that the reductions to points beyond the lake ports should not have been made. This defendant observes that if the joint rates had not been in effect, the reduction of the rate to Chicago would have made it possible to increase the eastern proportionals to the so-called normal basis and still maintain through rates by way of Chicago on a parity with the rates applicable by way of the other lake ports.

Complainants contend that the reduction of the rate from the Hurley group to Chicago should have been followed, as a matter of course, by an equal reduction in the joint rates from points of origin to final destinations, and that the failure to make such reduction resulted in the maintenance of unreasonable joint rates. Complainants mentioned several points in the same general territory as Odanah, but in other groups, from which rates to points east of the lake ports were 1 cent less than the rates from the Hurley group for distances

equal to or greater than the distances from Odanah. Substantially the same grouping has been maintained for a number of years, and the record contains no reference to any objection to the maintenance of the Hurley group rates from Odanah prior to the reduction of the rate from the Hurley group to Chicago. In fact, witnesses for each of the complainants stated that complainants would not have been particularly interested in the amount of the rates here involved provided no lower rates had been available to their competitors.

Defendants argue that neither the voluntary reduction of the rates to Chicago nor that of the joint rates affords any basis for condemning the former rates. The rates assailed to certain representative destinations yielded per ton-mile earnings ranging from 5.4 mills to 6.5 mills, and car-mile earnings, based upon an average load of 47,200 pounds, ranging from 12.68 cents to 15.22 cents for hauls ranging from 598 miles to 881 miles by way of Chicago. Statements submitted by defendants indicate that the joint rates charged on the shipments in question were in a few instances the same as, but generally less than, the aggregates of the intermediates to and from the lake ports.

We find that the rates assailed are not shown to have been unreasonable. The record does not support an award of reparation under a finding of undue prejudice; and as any prejudice which may have existed has now been removed, no finding with respect thereto is necessary.

An order will be entered dismissing the complaint.

43 I. C. C.

No. 7769.

BUFFALO UNION FURNACE COMPANY ET AL

v.

**BUFFALO & SUSQUEHANNA RAILROAD CORPORATION
ET AL.**

Submitted December 10, 1915. Decided February 5, 1917.

The adjustment of rates on coal and coke from points in the Reynoldsville district served by the Buffalo & Susquehanna Railroad Corporation to Buffalo, Lackawanna, and Harriet, N. Y., and other points in the so-called Buffalo-Black Rock switching district, found to be unduly prejudicial to the extent that the group rate on coal from the points of origin to the territory of destination named exceeds 80 per cent of the rate contemporaneously maintained on coke from Tyler and Sykes, points on said railroad, to Lackawanna.

Hoyt, Dustin, Kelley, McKeehan & Andrews; A. C. Dustin; and J. B. Putnam for complainants.

Daniel J. Kenefick and James Kennedy for Rogers-Brown Iron Company, interveners.

George Stuart Patterson for Pennsylvania Railroad Company.

Julius F. Workum and Simpson, Thacher & Bartlett for Buffalo & Susquehanna Railroad Corporation.

Guy Wellman for Buffalo & Susquehanna Railway Company and its receiver.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complainants, the Buffalo Union Furnace Company and the Wickwire Steel Company, are corporations operating blast furnaces and manufacturing pig iron at Buffalo and Harriet, N. Y., respectively. By complaint, filed February 23, 1915, they challenge as unjustly discriminatory the relationship of rates to Buffalo, Harriet, and Lackawanna, N. Y., and other points in the so-called Buffalo-Black Rock switching district, hereinafter referred to as Buffalo territory, on coal and coke from the Reynoldsville district, and also the relationship of rates to the same points of destination on coke from the Reynoldsville and Connellsville districts. Claims of the respective complainants for reparation in the sums of \$200,000 and \$125,000 were abandoned.

The Reynoldsville district is in northwestern Pennsylvania and the points of origin as to which relief is asked are on the line of the Buffalo & Susquehanna Railroad Corporation. The Connellsville

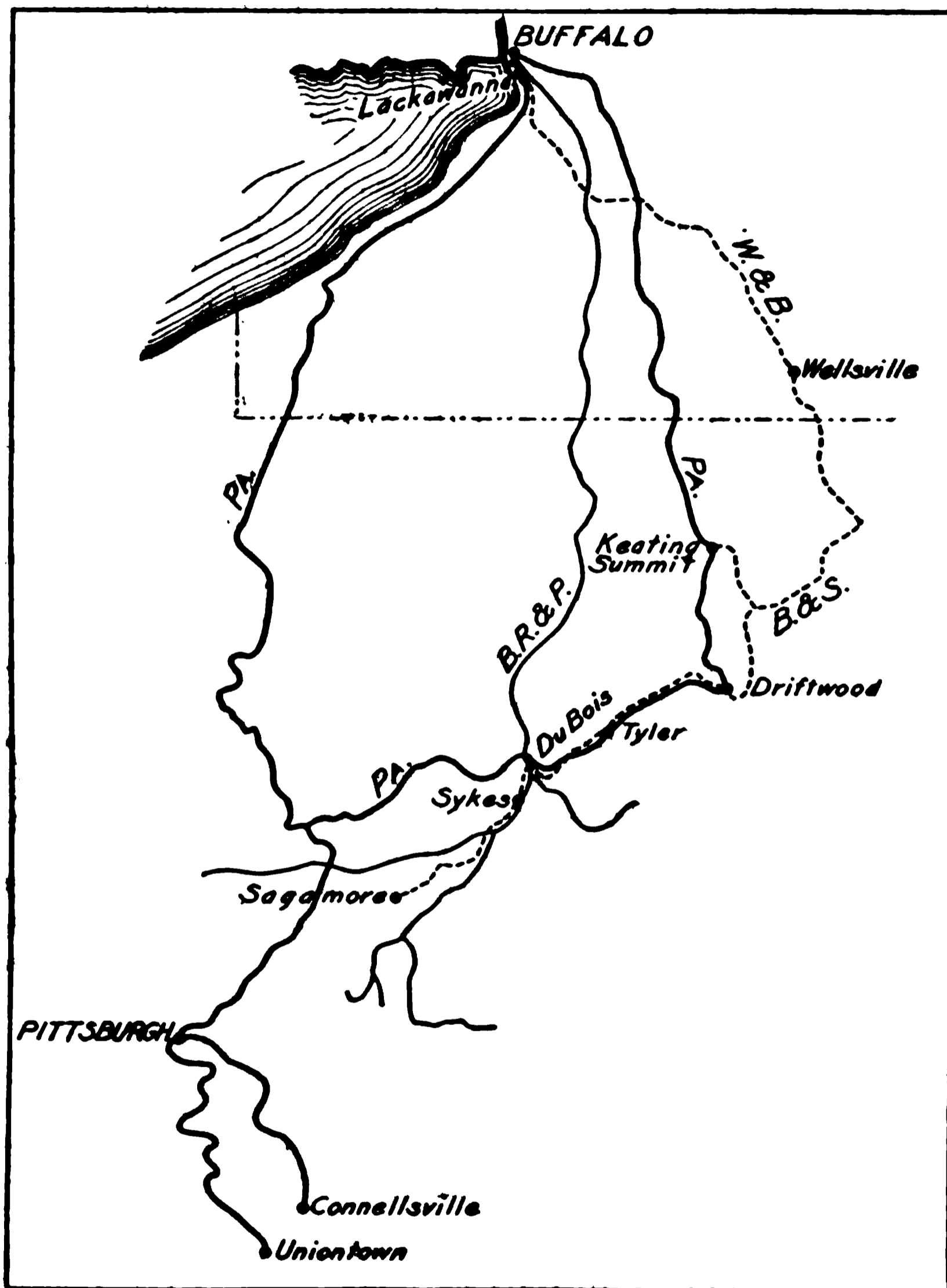
district is in the southwestern corner of Pennsylvania. From the Reynoldsville district there is a blanket rate of \$1.10 per net ton on coal to all points in Buffalo territory. The only points on the line of the Buffalo & Susquehanna at which coke is manufactured are Tyler and Sykes, and the rates in effect therefrom are \$1.05 to Lackawanna, \$1.25 to Buffalo, and \$1.30 to Harriet. From coke-producing points in the Reynoldsville district served by the Buffalo, Rochester & Pittsburgh Railroad there is a rate to Buffalo territory of \$1.45. From the Connellsville district there are blanket rates to Buffalo territory of \$1.40 on coal and \$1.85 on coke. The complainants ask for a rate on coal from the Reynoldsville district which shall not exceed 80 per cent of the rate on coke contemporaneously maintained from Tyler and Sykes to Lackawanna, and a rate on coke from the Connellsville district which shall not exceed by more than 40 cents per net ton the rate on coke from the Reynoldsville district.

The only party alleged to be unduly preferred by the present adjustment is the Rogers-Brown Iron Company, a competing manufacturer of pig iron, which intervened herein. The plant of this company is located entirely within the corporate limits of Buffalo, but its sidings extend into Lackawanna. Its coke shipments from Tyler and Sykes have been charged for in all cases at the Lackawanna rate of \$1.05.

The Buffalo & Susquehanna Railroad Corporation purchased at foreclosure, in 1913, the railroad property formerly owned by the Buffalo & Susquehanna Railroad Company. Its line extends in a general northeasterly direction from Sagamore, Pa., to Wellsville, N. Y., and connects at the latter point with the Wellsville & Buffalo Railway, which extends to the outskirts of Buffalo with trackage rights over other carriers into the city, and at Keating Summit and Driftwood, Pa., with the Pennsylvania Railroad. The Buffalo & Susquehanna Railroad Company was formed by the consolidation of several lumber roads, and from 1907 to 1910 was operated under a lease by the Buffalo & Susquehanna Railway Company, the predecessor of the Wellsville & Buffalo Railway Company. Both companies went into the hands of receivers in 1910, and since the incorporation of the present companies they have maintained separate and distinct organizations. The map on the following page illustrates the situation.

In 1904 the Powhatan Coal & Coke Company, a subsidiary of the Buffalo & Susquehanna Railroad Company, acquired title to coal lands at Tyler and Sykes and entered into contracts with the Buffalo & Susquehanna Iron Company, predecessor of the Rogers-Brown Iron Company, for their development. The railroad company sold its bonds of a par value of \$1,000,000, secured by bonds of the Powhatan Company of the same par value, for \$840,000, and

the Powhatan Company agreed to reimburse the iron company through its subsidiary, the Cascade Coal & Coke Company, for the construction of the mines, coke ovens, etc., in a sum not to exceed \$675,136.74, that being the difference between \$840,000 and the



amount expended by the Powhatan Company prior to the making of the contracts. The net result of the contracts is that the Cascade Company, the entire stock of which is owned by the iron company, mines coal and manufactures coke therefrom at Tyler and Sykes and sells the product to the Powhatan Company at the actual cost

of production. The latter, in turn, delivers the coke to the iron company at a price made by adding the cost of production by the Cascade Company to an amount just sufficient to pay the interest and sinking fund charges on its bond issue, its taxes, insurance, and operating expenses, and the freight rate of \$1.05 per net ton. In 1912 further contracts were entered into between the Powhatan Company and the Rogers-Brown Iron Company and certain subsidiary companies with a view to further development of the mines at Sykes and the building at that point of additional ovens. The total investment of the Rogers-Brown Iron Company at Tyler and Sykes, exclusive of the \$675,136.74 assumed by the Powhatan Company, is \$939,949.10. Under the contracts the iron company controls the entire output of the mines. The Buffalo & Susquehanna Railroad Corporation formerly owned all of the stock and bonds of the Powhatan Company except seven shares of stock held by the iron company.

The record does not show the date on which the movement of coke from Tyler and Sykes commenced, but it appears that the Pennsylvania has been a party to the \$1.05 rate since it first became effective or a short time thereafter, and that a substantial volume of this traffic moved via Keating Summit from 1905 to 1910. In the latter year, as stated, both the Buffalo & Susquehanna Railroad Company and the Buffalo & Susquehanna Railway Company went into receiverships, and thereafter, until April, 1914, all of this coke traffic apparently moved via Wellsville. In the latter part of 1913 the Buffalo & Susquehanna Railroad Corporation and the Pennsylvania Railroad Company entered into a 50-year contract for the handling via Driftwood, at which point a physical connection was constructed, of coal and coke originating on the line of the former and destined to or through Buffalo, and during the year commencing April 1, 1914, 475,222 tons of coke and 235,181 tons of coal moved via this gateway. The movement of this traffic via the Driftwood route enables the Buffalo & Susquehanna to avoid expensive switchbacks, heavy grades, and extreme curves incident to the haul to Wellsville or Keating Summit, and in addition the Pennsylvania delivers direct to the Rogers-Brown Iron Company, thus obviating the absorption of switching charges which was necessary via the Wellsville route.

The average loading of coal via the Buffalo & Susquehanna Railroad Corporation is 48 tons, and of coke 38 tons; and from the Connellsville district to Buffalo territory the coal rate is about 78 per cent of the coke rate. The defendants testified that the coke movement to Buffalo is more regular than the coal movement. However, from points on the Buffalo & Susquehanna the total movement of coal during the year ended June 30, 1915, was 1,080,672 tons, as compared to the coke movement of but 447,316 tons. A majority

of the coal originated at Sagamore, a point more distant than Tyler and Sykes from Buffalo by 59 and 37 miles, respectively, but approximately 40 per cent of it originated at Dubois, a point between Tyler and Sykes.

The \$1.10 rate on coal to Buffalo territory applies from a very large territory, and the Buffalo & Susquehanna carries it from all coal-producing points on its line, whereas a special rate is carried on coke from Tyler and Sykes to Lackawanna, which, under circumstances created by the carriers, can be availed of by but one shipper. The Buffalo & Susquehanna offers to extend this rate to any other points on its line at which ovens are constructed, but this constitutes no justification for an unfair relationship in rates on coal and coke, for the ovens at the mines are of the variety known as "beehive," whereas the complainants desire to make arrangements for the manufacture of the coke needed by them at Lackawanna or other points in Buffalo territory in "by-product" ovens, a method of manufacture testified to be more economical and less wasteful.

We are of opinion, and find, upon consideration of the facts appearing of record, that the present adjustment of coal and coke rates is unduly prejudicial to complainants and unduly preferential of the Rogers-Brown Iron Company to the extent that the group rate on coal from points of origin on the line of the Buffalo & Susquehanna Railroad Corporation to points in the Buffalo-Black Rock switching district exceeds 80 per cent of the rate contemporaneously maintained on coke from Tyler and Sykes to Lackawanna.

A great deal of the testimony introduced referred to the comparative qualities of the coke manufactured from Connellsville and from Reynoldsville coal, but, for the reasons hereinafter stated, we do not think it necessary or advisable on this record to prescribe any relationship between coke rates from the two districts.

The rates on coke from the Connellsville district have been considered by the Commission in a number of cases. *Coke Producers Assn. of Connellsville v. B. & O. R. R. Co.*, 27 I. C. C., 125; *Wisconsin Steel Co. v. P. & L. E. R. R. Co.*, 27 I. C. C., 152; *Youngstown Sheet & Tube Co. v. P. & L. E. R. R. Co.*, 27 I. C. C., 165; *Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co.*, 27 I. C. C., 168, and 30 I. C. C., 415; *The Five Per Cent Case*, 32 I. C. C., 325. In *Wickwire Steel Co. v. N. Y. C. & H. R. R. R. Co.*, *supra*, the rate on coke from the Connellsville district to Buffalo territory of \$1.85 was found not to be unreasonable.

The complainants do not question the relationship of coal rates to Buffalo territory from the Connellsville and Reynoldsville districts, and they desire the establishment from the latter district of substantially the same relationship between coal and coke rates as is in effect from the former. The Pennsylvania has stated that it will

not voluntarily participate in a coal rate from the Reynoldsville district to Buffalo lower than \$1.10, as it contends that a reduction in this rate would jeopardize its coal rates not only from the Connells-ville district but from other districts. It would therefore appear that the establishment of a reasonable and nondiscriminatory relationship between the coal and coke rates from the Reynoldsville district to the territory of destination involved would remove the cause of complaint.

The Pennsylvania Railroad Company cites *Ashland Fire Brick Co. v. S. Ry. Co.*, 22 I. C. C., 115, in support of a contention that there is no carrier upon whom responsibility can be placed for the alleged discrimination in the rates from the Reynoldsville and Connells-ville districts to Buffalo. If, as would appear, the Pennsylvania controls the rates from the two districts, it is charged with the duty of establishing rates therefrom which will avoid unjust discrimination, either between territories of origin or destination or between commodities; whereas if, as contended by the defendants, the route via Wellsville can control the rates from the Reynoldsville district to Buffalo territory, the proposed disposition will allow the carriers composing that route to establish such rates as in their opinion competition and other transportation conditions demand, provided that in so doing they do not subject shippers of either coal or coke to undue prejudice and disadvantage.

An order will be entered requiring the removal of the undue prejudice and disadvantage found to exist. We find no tariff authority in our files which justifies the application of the \$1.05 rate on shipments of coke from Tyler and Sykes to the Rogers-Brown Iron Company at Buffalo. The tariffs publish a rate to Buffalo of \$1.25 per net ton.

43 I. C. C.

No. 8300.
TEXARKANA FREIGHT BUREAU
v.
**ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.**

Submitted December 26, 1916. Decided February 12, 1917.

Upon complaint that the interstate carload class and commodity rates between Texarkana, Tex., and points in Arkansas are unduly discriminatory as compared with rates between points in the state of Arkansas; *Held*, That the unequal rates published by defendant St. Louis, Iron Mountain & Southern Railway for similar services have not been shown to result in undue prejudice to Texarkana, Tex., its merchants or jobbers. Case held open for 30 days.

E. M. Gleason and F. E. Potts for complainant.

Fred G. Wright and C. C. P. Rausch for St. Louis, Iron Mountain & Southern Railway Company and its receiver, and Texas & Pacific Railway Company.

Geo. Helme for Texarkana & Fort Smith and Kansas City Southern railway companies.

REPORT OF THE COMMISSION.

HALL, Commissioner:

Texarkana, Tex., and Texarkana, Ark., incorporated as separate municipalities, are commercially one. Industries there are located on both sides of the boundary line between the two states, although the greater number are on the Texas side.

Complainant, on behalf of designated individuals and firms engaged in business in Texarkana, Tex., filed complaint alleging (1) that carload rates between that city and points in Arkansas are unjustly discriminatory as compared with rates between Texarkana, Ark., and the same points, and (2) that carload rates from Texarkana, Tex., as compared with rates from jobbing points in Arkansas, to intermediate stations in Arkansas on the St. Louis, Iron Mountain & Southern Railway, hereinafter termed the Iron Mountain, are unjustly discriminatory. The reasonableness of the interstate rates is not questioned. Reparation is prayed.

Complainant made no attempt to show similarity in the conditions attending transportation from Texarkana, Tex., and from jobbing points within Arkansas to intermediate stations in Arkansas on

the Iron Mountain. So much of the complaint as deals with this phase of the case may therefore be dismissed from further consideration.

Defendant Texarkana & Fort Smith Railway alleges that at its instance the application over its line of the Arkansas state rates which it is claimed produce the discrimination has been enjoined. The St. Louis Southwestern Railway Company of Texas has no rails in Arkansas and is not responsible for the state rates. The St. Louis Southwestern Railway Company is not a party to this proceeding. The Texas & Pacific Railway Company owns a few miles of track in Arkansas but no industries are located thereon.

The Iron Mountain is the defendant responsible for the rates under attack. Its freight depot is on the Arkansas side. Less-than-carload traffic between Texarkana, Ark.-Tex., and points in Arkansas on the Iron Mountain is received from or delivered at that carrier's freight depot, and on this traffic the state rates are applied whether or not the shipper or receiver drays across the state line. State rates are also applied on carload traffic moving from or to Arkansas points to or from industries located in Texarkana, Ark. But the interstate rates published by the Iron Mountain are expressly made applicable to carload traffic moving between points in Arkansas and Texarkana, Tex. As the rails of the Iron Mountain do not extend into Texas, this traffic when it reaches Texarkana, Ark., is switched from the terminus of the Iron Mountain's rails over the Texas & Pacific, the St. Louis Southwestern of Texas, or the Texarkana & Fort Smith. This service beyond the line of the Iron Mountain is performed by the other defendants and a charge is made therefor which is absorbed by the Iron Mountain on competitive but not on noncompetitive business. No complaint is here made that these switching charges are unreasonable or that they result in undue prejudice to complainant.

The subjoined table shows the carload class rates and certain carload commodity rates, in cents per 100 pounds, in effect to Arkansas points from Texarkana, Ark., on the one hand, and from Texarkana, Tex., on the other. The distances given are from Texarkana, Ark.

Carload class and commodity rates from Texarkana, Ark.-Tex.,¹ to stations on St. L., I. M. & S. Ry. in Arkansas (main line).

To—	Miles.	S	A.	B.	C.	D.	E.	Agricultural imple- ments, including hand implements.	Brick, common.	Cement, stucco, plaster.	Fertilizers.	Lcs.	Salt.
Homan, Ark.....	12	8.0 11.0	9.0 12.0	7.0 10.0	6.0 7.0	5.0 6.0	4.0 6.0	9.0 12.0	2.0 2.0	5.0 6.0	3.5 4.0	3.5 4.0	5.0 6.0
Hope, Ark	32	12.0 14.0	13.5 15.0	10.5 13.0	9.0 9.0	7.5 8.0	6.0 7.0	13.5 15.0	2.5 2.5	7.5 7.0	4.5 6.0	4.5 5.0	6.0 7.0
Little Rock, Ark...	146	22.5 30.0	24.5 31.0	19.5 26.0	17.0 20.0	14.0 17.0	11.0 15.0	24.5 31.0	4.0 5.0	14.0 15.0	8.5 9.0	8.5 9.0	15.0 15.0
Jacksonville, Ark...	150	23.0 30.0	26.0 32.0	20.5 27.0	17.5 20.0	14.5 17.0	11.5 15.0	26.0 32.0	5.0 5.5	14.5 15.0	8.5 10.0	9.0 10.0	8.5 14.0
Bald Knob, Ark....	203	27.0 34.0	30.0 37.0	23.5 30.0	20.0 23.0	16.5 19.0	13.5 17.0	30.0 37.0	6.0 7.0	16.5 17.0	10.0 11.0	10.0 10.0	9.0 17.0
Minturn, Ark.....	250	29.0 36.0	32.5 38.0	25.0 32.0	21.5 25.0	18.0 22.0	14.5 18.0	32.5 38.0	7.0 8.0	18.0 18.0	11.0 12.0	10.5 11.0	10.0 18.0

¹ Rates shown on upper line are from Texarkana, Ark.; rates shown on lower line are from Texarkana, Tex.

In some instances the two sets of rates are the same. When there are differences the interstate rates are, with but few exceptions, higher by from approximately 10 to 90 per cent, the difference usually decreasing as the distance increases.

The evidence above recited indicates that the rates published by defendant for similar services are unequal. But a difference in rates does not necessarily constitute an undue or unreasonable preference.

The record contains nothing definite as to competition upon the unequal rates cited to us and affords no adequate basis for a finding of undue preference in favor of Texarkana, Ark., and against Texarkana, Tex.

The case will be held open for 30 days from the service of this report, and within that period complainant may apply for a further hearing to introduce evidence relating to competition between Texarkana, Tex., and Texarkana, Ark. Failing such application the complaint will be dismissed.

No. 9128.

E. I. DUPONT DE NEMOURS POWDER COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY.

Submitted January 16, 1917. Decided February 20, 1917.

The complaint alleges that the rate charged by the Pennsylvania Railroad Company on certain shipments of coal ashes and cinder from a point on the Philadelphia & Reading Railway in Coatesville, Pa., to Carney's Point, N. J., was unreasonable. The Philadelphia & Reading Railway Company performed a service in connection with the shipments, but was not made a party defendant. Complaint dismissed.

V. S. Thomas and J. P. Laffey for complainant.

Frederick L. Ballard and Henry Wolf Biklé for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged at Carney's Point, N. J., in the manufacture of explosives, with its principal office at Wilmington, Del. By complaint, filed August 23, 1916, as amended, it alleges that the rate of 13.7 cents per 100 pounds charged by defendant on 107 carloads of coal ashes and cinder shipped from Coatesville, Pa., to Carney's Point during the period from March 31, 1915, to June 21, 1915, inclusive, was unreasonable. Reparation is asked and the establishment of a reasonable rate for the future.

Coatesville is served by the Philadelphia & Reading Railway and the Pennsylvania Railroad. The shipments in controversy originated at Worth Brothers' plant, which is local on the Philadelphia & Reading Railway in Coatesville. The Philadelphia & Reading switched them to its interchange tracks with the Pennsylvania Railroad, and charged 20 cents per ton for this service. This switching charge was absorbed by the Pennsylvania Railroad. The Philadelphia & Reading was not made a party defendant to this proceeding, nor was the switching charge assailed. The Pennsylvania Railroad insists both in brief and argument that the Philadelphia & Reading is a necessary party defendant, and asks that the complaint be dismissed on account of the nonjoinder.

We find that the Philadelphia & Reading Railway Company was a necessary party defendant to this proceeding, and as it was not named, the complaint will be dismissed. An order will be entered accordingly.

McCHORD and DANIELS, *Commissioners*, dissent.

No. 5887.
NATIONAL SYRUP COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted January 9, 1915. Decided February 20, 1917.

Upon a review of the record in the light of the additional evidence adduced on rehearing, the findings and order of the original report are reversed and the complaint dismissed.

Frank Lyon for complainant.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

C. C. Wright and *R. H. Widdicombe* for Chicago & North Western Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

T. J. Norton and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway Company.

Winston, Payne, Strawn & Shaw for Chicago Great Western Railroad Company and Chicago & Alton Railroad Company.

N. S. Brown for Wabash Railroad Company and its receiver.

REPORT OF THE COMMISSION ON REHEARING.

HARLAN, Commissioner:

An examination of the original report in this proceeding, 28 I. C. C., 673, will be of aid in understanding the situation now before us.

It there appeared that the complainant was engaged at St. Joseph, in the state of Missouri, in the manufacture of what is known in the trade as corn sirup, a blend consisting of 90 per cent of glucose and 10 per cent of refiner's sirup. The original report shows also that the complainant was securing its supply of glucose at Clinton, in the state of Iowa, from which point the rate in effect was 18½ cents per 100 pounds. Under usual and ordinary conditions that rate, therefore, would have been the one in which the complainant was chiefly interested. The record, however, offered no basis for an order requiring any reduction in that rate, and the testimony adduced seems to indicate that on that rate the complainant could have conducted its business satisfactorily. Moreover, a change in

the rate from Clinton to St. Joseph, whether established voluntarily by the carriers or under the compulsion of an order by this Commission, would have brought no direct relief to the complainant; for, as the original report explains, the production of glucose is so controlled by strong companies as to enable the manufacturers to fix the price at St. Joseph on shipments from Clinton without regard to the Clinton rate, but by adding the Chicago rate to the price of glucose on the Chicago market. Because of this condition in the trade the complainant, although securing its glucose at a point from which the rate to St. Joseph was but 18½ cents, was nevertheless required to pay for it, when delivered from Clinton, the Chicago price plus the Chicago rate of 23½ cents per 100 pounds.

Upon the record then before us we found the Chicago rate to be unreasonable and required the carriers for the statutory period to maintain a maximum rate from Chicago of 18½ cents. Before the order became effective, however, it was stayed by the granting of a petition for rehearing filed by the defendant carriers.

At the rehearing it was asserted by the only witness who testified on behalf of the carriers that if the reduction of 5 cents per 100 pounds were made in accordance with the findings of the original report the loss in revenue to the interested carriers would approximate \$50,000 or \$60,000 a year, not on the shipments to St. Joseph alone, but because of other readjustments that would be required throughout the entire western territory in consequence of such a reduction in the St. Joseph rate from Chicago. The differences in traffic conditions east and west of the Mississippi River were also developed on the rehearing. It was shown also that the empty return movement of tank cars, in which apparently the greater part of the traffic moves, had not been given detailed consideration on the original record and in the original report. The record now indicates that the empty haul of tank cars by three of the defendant carriers ranges from 90 to 95 per cent of the loaded tank-car mileage. If this empty movement be considered, as obviously it should be, the car and per ton-mile earnings, as stated in the original report, are materially less significant than there indicated. In the original report, as will be observed, some weight was also attached to the fact that the rate on glucose from Chicago to New York was but 20 cents. This rate has since been increased to 25 cents as the result of the findings and order in *Glucose from Chicago*, 36 L. C. C., 379.

Upon a reexamination of the original record in the light of the information adduced upon the rehearing, we have reached the conclusion and so find that the rates complained of have not been shown to be unreasonable or otherwise unlawful. It is clear that the com-

plainant's difficulties do not arise out of the carriers' rates, but are largely due to the commercial conditions surrounding the glucose industry, as the result of which the complainant in effect paid the Chicago rate, although the defendant carriers collected only the rate from Clinton, where the complainant secured its glucose. Had the complainant been able to obtain its glucose supply on the basis of the established rate for the transportation service actually performed for the complainant by the defendant carriers, the cost of the raw glucose laid down at St. Joseph would have been 5 cents per 100 pounds less. Such trade conditions as these lie outside our province and are beyond our reach. Another condition, quite unfavorable for the complainant, and the one that undoubtedly most affected the capacity of the complainant successfully to meet its competition, was the fact that the rate on glucose, the raw material, is the same as the rate on corn sirup and other manufactured products, the principal ingredient of which is glucose. When glucose, mixed with 10 per cent of refiner's sirup, is packed in cans or bottles, the mixture, as heretofore stated, is known as corn sirup and has a market value in excess of the market value of the raw glucose by about 40 per cent; but these admixtures, when packed in cans and shipped in box cars, pay a freight rate no higher than the rate on glucose shipped either in box cars or tank cars. A manufacturer of sirup at Chicago or at any of the Mississippi River points is thus enabled to lay down the finished product at St. Joseph on exactly the same rate basis as the complainant herein was obliged to pay on its raw glucose. It may be that the rate on glucose shipped in tank cars should be somewhat less than the rate on corn sirup. Such a finding, however, between the points of origin and destination here involved would affect rates on glucose and corn sirup throughout the entire western territory, and would not be justified upon the record now before us.

As the order heretofore entered was vacated on the granting of the petition for rehearing, it will suffice, to give effect to these conclusions, to dismiss the original complaint; and such an order will be entered.

CLEMENTS, *Commissioner*, dissenting:

I am unable to perceive anything of material substance in the record of the rehearing of this case that we did not have before us when it was first decided; neither am I convinced that there was error in that decision. I can not, therefore, now agree to the dismissal of the complaint.

No. 4488.
TAMPA FUEL COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted September 27, 1913. Decided February 20, 1917.

Handling and wharfage charges imposed by defendants at Port Tampa, Fla., on shipments of coal from north Atlantic ports to Tampa, Fla., found to have been unreasonable. Reparation awarded.

Cassoday, Butler, Lamb & Foster for complainant.
R. Walton Moore for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation, with its principal office at Baltimore, Md., was formerly engaged in buying and selling coal. By complaint, filed October 14, 1911, it alleges that the charges collected by defendant Atlantic Coast Line Railroad Company, hereinafter called the Coast Line, on certain carloads of coal from Port Tampa to Tampa, Okahumpka, Bradentown, Lakeland, Plant City, and Nichols, Fla., during the period from January, 1908, to May, 1911, inclusive, were illegal. On December 15, 1911, the complaint was amended to allege also that the published tariff charge for handling and wharfage at Port Tampa, and the local rates for the rail hauls from Port Tampa to the destinations named, severally were unreasonable, and, as compared with the through rates maintained from the vessel's hold at Port Tampa to points in the so-called Bone Valley district of Florida, unjustly discriminatory. The Atlantic Land & Improvement Company, hereinafter called the terminal company, was made a party defendant. It owns the docks and other harbor improvements at Port Tampa, but its stocks and bonds are owned by the Coast Line. Both companies are represented at Port Tampa by the same officer or agent, who acted as manager or superintendent of the docks and other wharf facilities and also as defendants' station agent. Reparation is asked. The shipments to all the destinations named, except those to Tampa, and also certain of the shipments to Tampa, were delivered more than two years prior to the filing date of the complaint. The claims on the shipments not delivered within the two-year period are barred by the statute of limitations, and will not be considered.

Port Tampa is 9 miles southwest of Tampa. The Bone Valley district is in southern Florida, southeast of Tampa.

The coal originated at various north Atlantic ports and moved to Port Tampa in ocean vessels. A charge of 25 cents per long ton was paid by the master of each vessel for unloading the coal at Port Tampa. The tariffs of the Coast Line named a handling and wharfage charge of 40 cents per long ton, applicable at Port Tampa on shipments not destined to points in the Bone Valley district. The tariffs provided that the term "handling" would cover the labor or legitimate expense involved in the movement of the traffic "between ship side and cars." The local rate of the Coast Line from Port Tampa to Tampa, not filed with this Commission, was 25 cents per short ton, equivalent to 28 cents per long ton. The total transportation charge from Port Tampa to Tampa, including the handling and wharfage charge, was 68 cents per long ton. There were published through rates of 85 cents per long ton by way of the Coast Line from Port Tampa, "vessel's hold," to various points in the Bone Valley district. Complainant's coal was shipped from Port Tampa partly to phosphate mines in the Bone Valley district and partly to consumers at Tampa and at other points. On the theory that the 25 cents per long ton paid by the masters of the vessels for unloading from the ocean vessels was really a charge in connection with the rail transportation complainant contends that the charge to the masters was illegal as applied to the coal shipped to Tampa because imposed without tariff authority.

The coal moved from north Atlantic ports to Port Tampa under charter parties between complainant and the masters or owners of the vessels at agreed transportation rates, which included delivery. Before a particular vessel arrived at Port Tampa complainant would notify defendants' agent when it was expected to arrive, with specific instructions as to what portion of the coal was to be shipped to Tampa and as to what portion was to be shipped to the Bone Valley district. The vessel masters were accustomed to have the unloading done by the agent so notified and to pay an agreed charge of 25 cents per long ton, which was the usual and customary charge for such service not only at Port Tampa, but at other south Atlantic ports to which coal was shipped in the same kind of vessels. If the coal was unloaded from the vessels into cars of the Coast Line it was billed out by defendants' agent, part to Tampa and part to the phosphate mines in the Bone Valley district, according to the instructions given by complainant. The tariff charge of 40 cents per long ton for handling and wharfage and the charge of 28 cents per long ton for the rail haul were collected on the shipments to Tampa; the through rate of 85 cents per long ton from the vessel's

hold, on the shipments to the Bone Valley district. The unloading charge of 25 cents was in every case paid by the master of the vessel.

The question of our jurisdiction was raised by defendants. The shipments to Tampa did not move under any common control, management, or arrangement for continuous carriage or shipment. The record shows, however, that when each cargo of coal was delivered to a water carrier at a north Atlantic port the coal started in transportation, water and rail, to points in Florida beyond Port Tampa. The movement by rail from Port Tampa carried out the original intention entertained at the time the vessels were loaded at the north Atlantic ports. The rail movement from Port Tampa to Tampa, and the handling and wharfage at Port Tampa in connection therewith, as part of interstate transportation, are subject to our jurisdiction. *Tex. & N. O. R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111; *Ohio R. R. Comm. v. Worthington*, 225 U. S., 101; *Mutual Wheel Co. v. N., C. & St. L. Ry.*, 40 I. C. C., 612.

The rate charged to Port Tampa included delivery of the coal at Port Tampa, and delivery required the removal of the coal from the vessel. The vessel masters generally employed others to remove the coal instead of removing it themselves. Indeed, the record shows that it was impracticable, if not impossible, for the masters of the vessels to perform the unloading service. They always employed defendants' agent. There was no opportunity for consignees to receive shipments of coal at the Port Tampa docks, and no facilities for storage were provided. The entire physical arrangement at the Port Tampa docks contemplated a transfer of coal direct from the vessel's hold to the cars of the Coast Line by means of a cable apparatus of the terminal company. The coal in question was transferred by that means.

As stated, the through rates of 85 cents from Port Tampa to points in the Bone Valley district cover the service from the hold of the vessel to final destination. The division of the 85-cent rate allows 40 cents to the terminal company for the service from the hold of the vessel to cars and 45 cents to the Coast Line for the rail haul. The 40-cent division to the terminal company divides: 25 cents for unloading the coal, which is equal to the charge paid by the masters of the vessels for the same service on coal destined to Tampa, and 15 cents for trimming it in the cars. This 40-cent division equals the tariff charge of 40 cents per long ton for handling and wharfage which defendants collected from complainant on the coal to Tampa. In addition, defendants collected an unloading charge of 25 cents per long ton from the masters of the vessels on the coal to Tampa. The handling and wharfage charge of 40 cents per long ton also divides 25 cents and 15 cents. It will be observed

that for unloading the coal and trimming it into cars the terminal company received 40 cents per long ton on shipments to the Bone Valley district and 65 cents per ton on shipments destined to Tampa. On the coal to the Bone Valley district the 25-cent unloading charge paid by the masters of the vessels was applied by defendants on the through rate of 85 cents, and complainant paid 60 cents per ton, the balance of the through rate.

With respect to the shipments to Tampa, defendants argue that they, acting for the masters of the vessels, completed the delivery for the masters when they lifted the coal, in the buckets, to a point directly above the rail of the vessel, and that the 40-cent handling and wharfage charge paid by complainant was for the service from the rail of the vessel to the cars. An exhibit was introduced by defendant for the purpose of showing that the actual cost of moving coal from vessel's hold at Port Tampa to cars of the Coast Line is approximately 39.89 cents per long ton. But this exhibit is unsupported by such evidence as is necessary to give it force.

In support of its contention that the 28-cent per long ton charge for the rail haul from Port Tampa to Tampa was unreasonable, complainants cited lower rates applying on coal for like distances between points in other territories. But the rates cited are maintained under entirely dissimilar circumstances and conditions. In addition, complainant emphasizes the 85-cent Port Tampa-Bone Valley district rates. Defendants explain that, when the 85-cent rates to the Bone Valley district were established, various phosphate mines in that district had exhausted their supply of wood, which they had formerly used as fuel, and that the mines were threatened with bankruptcy unless they could secure coal at a very low rate; that the 85-cent rates were established to meet the necessity of maintaining these phosphate mines because the mines were furnishing a very heavy outbound tonnage to the Coast Line and their operation was essential to the very existence of the Coast Line's Bone Valley district line. It is contended that the 85-cent rates were abnormally low, and would not have been established but for the unusual conditions obtaining with respect to the mines. Defendants observe that there is no return movement of traffic from Tampa to Port Tampa.

Recent harbor improvements at Tampa enable ocean vessels to take the coal direct to Tampa and avoid the necessity of transfer at Port Tampa.

Upon consideration of all the facts of record, we find that the rate charged for the rail haul from Port Tampa to Tampa is not shown to have been unreasonable, but that, for the service rendered to complainant, the handling and wharfage charge of 40 cents per long ton

at Port Tampa, as applied to the shipments in question, was unreasonable to the extent of 25 cents per long ton. We further find that complainant made the shipments as described and paid and bore a handling and wharfage charge thereon of 40 cents per long ton; that it has been damaged to the extent that the handling and wharfage charges collected on the shipments to Tampa exceeded the handling and wharfage charges that should have accrued based on a charge of 15 cents per long ton; and that it is entitled to reparation, with interest, on shipments not barred by the statute of limitations. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments to Tampa, not barred, in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified, we shall consider the entry of an order awarding reparation.

As no coal now moves over the Coast Line from Port Tampa to Tampa, no order for the future is necessary.

HALL, *Commissioner*, dissenting:

The provisions of the act to regulate commerce apply—

to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment),

under the circumstances described in the act.

The vessels which performed the water transportation in the present case were chartered boats and not common carriers. *The Pawnee*, 205 Fed., 333. Moreover, the evidence adduced does not, to my mind, indicate that the transportation partly by railroad and partly by water was performed “under a common control, management, or arrangement for a continuous carriage or shipment.”

Clearly the transportation was subject to the regulatory power of the Congress. The authority conferred upon this Commission through the act to regulate commerce is not, however, coterminous with that vested in the Congress. *Seymour v. M. L. & T. R. R. & S. S. Co.*, 35 I. C. C., 492. As two of the prerequisites to the exercise of our jurisdiction are absent, I am constrained to dissent from the majority report.

43 L. Q. Q.

No. 8258.
NAPANEE LUMBER & MANUFACTURING COMPANY
v.
BALTIMORE & OHIO SOUTHWESTERN RAILROAD
COMPANY ET AL.

Submitted February 2, 1916. Decided February 20, 1917.

Charges on shipments of silo staves and rafters, in carloads and less than carloads, from Napanee, Ind., to various interstate destinations found unreasonable to the extent that they exceeded and exceed the charges based on a rating not in excess of that contemporaneously maintained on lumber of the kind from which the staves and rafters were made. Reparation awarded on less-than-carload shipments.

Beaumont, Smith & Harris for complainant.

R. N. Collyer and *L. E. Hinkle* for official classification lines.

Parker McColleston for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Lake Erie & Western Railroad Company; Michigan Central Railroad Company; Pittsburgh & Lake Erie Railroad Company; and Toledo & Ohio Central Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of wooden silos and wooden silo material, with its principal office at Napanee, Ind. By complaint, filed August 23, 1915, it alleges that the carload and the less-than-carload ratings prescribed by the official classification and applied by defendants on wooden silo staves and rafters subject complainant's products to rates that are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceed rates based on the ratings contemporaneously applicable in official classification territory on lumber of the kind from which the staves and rafters are made. Reparation is asked on less-than-carload shipments moved from Napanee to interstate destinations since October 14, 1913.

Since March 31, 1915, the official classification has rated wooden silo staves, cut to dimensions, or fitted and knocked down, loose or in packages, less than carloads, rule 26; in carloads, minimum 30,000 pounds, fifth class; and silo material, n. o. s., cut to dimensions or fitted and knocked down, in bundles or crates, less than carloads, third class; in carloads, minimum 30,000 pounds, fifth class. The

latter rating includes silo rafters. Previously the rating on both staves and rafters, in less than carloads, was third class. The official classification rates lumber, less than carloads, fourth class, and in carloads, sixth class. Rule 26 provides a rating of 20 per cent less than third class, but not lower than fourth class. Complainant does not ask that silo staves and rafters be given commodity rates equivalent to the rates on lumber, but insists that inasmuch as lumber is classified as stated, rates on staves and rafters should not exceed those based on ratings prescribed by the official classification on lumber.

Silos are receptacles for the storage of fodder and other rough feeds, and are constructed of various materials. Lumber is generally used. The silos manufactured by complainant appear to be representative of wooden silos. They may be described as circular tanks set on wooden or concrete foundations and consist of upright staves bound together with iron hoops, covered with a roof, and ranging from 8 feet to 20 feet in diameter, and from 16 feet to 40 feet in height. The roof, usually made of sheet iron or some other metallic substance, is fastened to rafters. Wooden doors extend from the bottom to the top of the silo. No complaint is made with reference to the classification of any part of the silo other than the staves, which form the shell of the completed silo, and the rafters, which support the roof.

The wooden parts of silos are manufactured from pine, fir, redwood, tamarack, and other native woods, ranging in value from \$20 to \$45 per 1,000 feet board measure. Complainant uses yellow pine and fir. The staves are 2 inches thick by 5 inches wide, range from 8 feet to 36 feet in length, and are tongued, grooved, and beveled to a 6-foot radius. However, staves of the same bevel are used in silos of all sizes. Complainant manufactures two kinds of silos; one-piece silos and end-matched silos. In the one-piece silo the staves are of uniform length and extend from bottom to top; staves of various lengths are used in end-matched silos. The one-piece silo is about 10 per cent more valuable than the end-matched silo, made from the same grade of lumber. No operation whatever is performed by complainant upon the staves that go into the one-piece silo. The rafters are 2-inch by 8-inch pieces of lumber. The quantity shipped in proportion to the movement of staves is comparatively small. As our finding with respect of staves would equally apply to rafters, it will suffice to refer hereafter only to staves.

The record shows that complainant manufactures about 1,400 silos a year. The staves in the completed silo average between 4,000 and 5,000 pounds. About 60 per cent of complainant's total output

moves in less-than-carload lots and the remainder in carloads. The lumber from which the silos are made moves from producing points in the south and west to complainant's plant at lumber rates. It is tongued, grooved, and beveled at point of origin. About 20 per cent goes into the completed silo as it comes from the sawmills without any change being made at complainant's plant. This is used for staves of one-piece silos and when so shipped takes the lumber rates.

The only operation performed by complainant on the staves consists of end matching, which complainant contends does not physically exhibit the effect of a distinct manufacturing operation. There are several methods of end matching followed by the manufacturers, and while each is different in detail they serve the same purpose. The ends of complainant's staves are matched by sawing two diagonal cuts which form a V-shaped splice. A center slot is cut across the end of the stave into which a steel spline the width of the stave may be inserted to make the joint tight. Some manufacturers end match by sawing the center slot only, into which is fitted the steel spline. Orders for silos are solicited by salesmen, and complainant ships the quantity of staves and other material necessary for their erection. The hoops, splines, doors, and other material shipped are billed separately and take separate ratings, about which, as stated, there is no complaint. The purchaser secures the services of a carpenter and erects the silo according to plans furnished by the manufacturer. Complainant adds about 88 per cent to the cost of the lumber in arriving at the selling price of the silo staves, which covers the profit and overhead costs of advertising and selling. The advertising is said to be expensive, as farmers and stockmen must be educated to the uses of the silo.

Complainant contends that end matching does not increase the transportation hazard, but is analogous to tongues and grooves or lumber of which there are various patterns. When the end-matching operation is performed at points of origin, the staves move at lumber rates. The lumber used by complainant is similar to ordinary barn flooring and may be used interchangeably. Barn flooring is tongued, grooved, and slightly beveled. Ordinary flooring, made of many kinds of lumber, is tongued, grooved, beveled, and end matched, and takes lumber rates. Complainant further bases its contention with regard to the unreasonableness of the ratings on silo staves upon comparison with other analogous wood articles which take the lumber rates, of which the following are examples: Boards, base, ceiling, flooring, paneling, and wainscoting; wooden pipe, built up, unlined or tin lined; box, stock or stuff; wooden boxes folded flat; cooperage stock; wooden staves with metal hoops attached; vehicle parts and vehicle stock or stuff; and furniture parts and stock or stuff. Vari-

ous kinds and grades of lumber, and many of the articles taking the lumber rates, are more valuable than silo staves and further advanced in manufacture. The western classification rates silo staves, less than carload, third class; carloads, class D; lumber, less than carloads, fourth class; carloads, lumber tariff rates; but by exceptions in various tariffs silo staves move in many instances at lumber rates. The southern classification rates silo staves, less than carloads, sixth class, and in carloads, class A. Lumber is rated: Less than carloads, fourth class, and in carloads sixth class.

Complainant named various competitors in Indiana, Michigan, Illinois, and Ohio, but no tangible testimony relative to the allegations of unjust discrimination and undue prejudice was adduced.

Defendants contend that this traffic is different commercially from what is commonly described as lumber, and that it is advanced in manufacture by the end fitting. Their position, in this respect, is similar to that of the defendants in *Sligo Iron Co. v. St. L. & S. F. R. R. Co.*, 28 I. C. C., 616. Defendants also argue that silo staves are greatly enhanced in value by the operations performed by complainant; that the volume of tonnage is small as compared to the lumber movement; and that the slight difference in ratings is fully justified.

This case is not unlike that of *Indianapolis Chamber of Commerce v. St. L. & S. F. R. R. Co.*, 42 I. C. C., 6, in which we found that rough snath sticks were entitled to the lumber rates. See also *Florence Wagon Works v. M., O. & G. Ry. Co.*, 36 I. C. C., 650.

Upon all the facts of record, and following the cases cited, we find that the ratings on silo staves and rafters were, are, and for the future will be unreasonable to the extent that they exceeded and may exceed the ratings contemporaneously maintained on lumber of the kind from which they are made. This finding is subject to modification if a different conclusion shall be reached in our general investigation.

Complainant makes its sales of silo materials based on delivery at destinations at the fifth-class rates. On less-than-carload shipments there is added to the sale price an amount equal to the difference between the actual freight charges paid and those based on the fifth-class rates. Under these circumstances complainant's right to reparation was questioned. The record is clear that complainant paid the freight charges as such. To go into the matter of allowances between the parties would lead us away from the direct results of the acts of the carriers in the exaction of unreasonable rates into the domain of indirect and remote consequences, and perhaps into questions of equity between vendors and vendees. *Sanford-Day Iron Works v. L. & N. R. R. Co.*, 41 I. C. C., 10; *Sloss-*
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Sheffield Steel & Iron Co. v. L. & N. R. R. Co., 40 I. C. C., 788. Reparation is due to the person who has been required to pay the excessive charge as the price of transportation. *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 199, 209.

On the shipments which moved on and after April 1, 1915, complainant paid rule 26 rates on less-than-carload shipments of end-matched staves and third-class rates on the rafters. Prior to that date third-class rates were paid on both commodities. We, therefore, find that on the less-than-carload shipments complainant has been damaged to the extent of the difference between the charges paid on the basis herein found unreasonable and those which would have accrued on the basis herein found reasonable, and that it is entitled to reparation with interest on shipments which moved within the statutory period. The amount of reparation due can not be determined on this record and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

It is noted that some of the destinations enumerated are in the state of Indiana. Unless such shipments moved over interstate routes they should not be included in the statement.

An appropriate order will be entered.

43 I. C. C.

No. 7425.

DALLAS COOPERAGE & WOODENWARE COMPANY

v.

GULF, COLORADO & SANTA FE RAILWAY COMPANY
ET AL.

Submitted May 5, 1916. Decided February 20, 1917.

Rates on rough staves and rough heading from certain points in Arkansas and Louisiana to Oak Cliff, Tex., found unreasonable to the extent they exceed the rates on like traffic from the same points of origin to Dallas, Tex.

J. A. Morgan and *Dan A. Kivlen* for complainant.

P. J. Lomax and *A. E. Hutchison* for Gulf, Colorado & Santa Fe Railway Company.

J. F. Garvin for Missouri, Kansas & Texas Railway Company of Texas and its receiver.

Thomas Bond for St. Louis & San Francisco Railroad Company, St. Louis, San Francisco & Texas Railway Company and their receivers.

J. B. Payne for Texas & Pacific Railway Company.

A. J. Lehmann and *D. Updegrave* for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

J. R. Christian for Houston, East & West Texas Railway Company; Houston & Shreveport Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; and Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the cooperage business, with plants at Dallas and Oak Cliff, Tex. By complaint, filed October 1, 1914, as amended it alleges that defendants' rates on rough staves and heading from Fordyce, Camden, Little Rock, Arkadelphia, Rector, Ashdown, Pine Bluff, Nettleton, Mellwood, and Mayton, in the state of Arkansas, and from Monroe, Shreveport, Plaquemine, Alexandria, Haynesville, and Rapides, in the state of Louisiana, to Oak Cliff are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceed the rates contemporaneously in effect on like traffic from the same points of origin

to Dallas. The establishment of reasonable joint rates for the future is asked. Reparation was asked, but the prayer therefor was withdrawn at the hearing.

Oak Cliff is a local station on the Gulf, Colorado & Santa Fe Railway, hereinafter called the Santa Fe. It is within the corporate limits of Dallas, but about 1.6 miles outside of the Dallas switching district. The Santa Fe's principal witness testified that it was the policy of his company to maintain equal rates, both class and commodity, to Oak Cliff and Dallas, from all points on its line, and from all points on the lines of other carriers where the Santa Fe controlled the making of the rates to both points. Complainant stated that in so far as it could ascertain, rates on classes and commodities from all points on the lines of the other defendants to Oak Cliff are the same as the rates to Dallas, with the exception of the rates on lumber and articles taking the same rates, including rough staves and rough heading, on which articles higher rates are maintained to Oak Cliff than to Dallas. This statement was not challenged by defendants. The record contains statements by all of defendants' representatives who actively participated in the hearings to the effect that the rates to Oak Cliff should not exceed the rates to Dallas. The failure to equalize the rates on rough staves and rough heading to Dallas and to Oak Cliff from the points of origin here involved results solely from the inability of defendants to agree upon divisions of the Oak Cliff rates.

We find that the rates assailed are and for the future will be unreasonable to the extent that they exceed and may exceed the rates contemporaneously maintained on rough staves and rough heading from the points of origin involved to Dallas. If defendants are unable to agree upon divisions, that matter may be presented to us for determination.

It developed at the hearing that it had been a common practice for complainant to have interstate shipments of rough staves and rough heading intended for Oak Cliff, and in connection with which joint rates from points of origin to Oak Cliff were legally applicable, consigned to Dallas. Complainant would then pay the charges to Dallas and reship under a new bill of lading to Oak Cliff at an intrastate rate of \$5 per car. In each instance the joint through rates from the point of origin to Oak Cliff exceeded the aggregate of the rates to and from Dallas. This practice by complainant was an illegal device to defeat the joint rates legally applicable, and shipments handled in the manner indicated were undercharged.

An order will be entered in accordance with our findings herein.

HALL, Commissioner, dissents.

No. 7780.¹
CONNOR LUMBER & LAND COMPANY
v.
GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted October 1, 1915. Decided February 20, 1917.

Rates on lumber in carloads from Snyders, Wis., to points in Minnesota and North Dakota on the Great Northern and the Northern Pacific railways not shown to be unreasonable or unduly prejudicial. Complaints dismissed.

Felix J. Streyckmans for complainant.

D. F. Lyons for Northern Pacific Railway Company and Great Northern Railway Company.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

Goggins & Brazean for Laona & Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with its principal office at Laona, Wis., and a mill at Snyders, Wis. By complaints, filed February 25, 1915, it alleges that defendants' carload rates on lumber, lath, poles, shingles, and other articles taking lumber rates, from Snyders to destinations in Minnesota and North Dakota on the Great Northern and the Northern Pacific railways, hereinafter respectively called the Great Northern and the Northern Pacific, based on the Minnesota Transfer, Minn., combinations, are unreasonable and subject complainant to undue disadvantage. The establishment of reasonable joint rates is asked. Rates are stated in cents per 100 pounds.

Snyders is on the Laona & Northern Railway, which extends northward from Laona, a junction point with the Chicago & North Western Railway, hereinafter called the North Western, to Laona Junction, Wis., where it connects with the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line. Minnesota Transfer is 252 miles from Snyders by way of the Laona & Northern and the Soo lines.

¹ The proceeding also embraces complaint in No. 7780 (Sub-No. 1), Same *v.* Laona & Northern Railway Company et al.

The Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, the Chicago Great Western Railroad, hereinafter called the Great Western, the Chicago, Rock Island & Pacific Railway, and the North Western publish joint rates from Snyders and other Wisconsin points to points on their lines in Minnesota, Iowa, and South Dakota. The Soo line also participates in joint rates to this consuming territory. Some of the Soo line rates were originally established by the Wisconsin Central Railroad, prior to its absorption by the Soo line, in order to stimulate the movement of lumber from Wisconsin; others were established to meet the competition of more direct lines. Generally speaking, no joint through rates apply on lumber from Snyders to destinations on the Great Northern and the Northern Pacific; and through rates are generally constructed on the basis of the joint rates of the Laona & Northern and the Soo line to Minnesota Transfer, plus the local rates beyond. The rates attacked are made on the usual basis so far as structure and grouping are concerned.

Prior to March 20, 1913, a rate of 8 cents applied on hard and soft lumber from Snyders and other points in the so-called Crandon group to Minnesota Transfer, and a rate of 10 cents applied on posts, poles, lath, shingles, flooring, ceiling, and other articles taking lumber rates. On that date piling was included with hard and soft lumber, taking the 8-cent rate. These rates applied until April 15, 1916, subsequently to the filing of the complaints herein, when a joint rate of 9 cents was established from Snyders to Minnesota Transfer on hard and soft lumber and piling, as well as on posts, poles, lath, shingles, flooring, ceiling, and other articles taking lumber rates. The 9-cent rate is still in effect.

Complainant contends that the joint rate from Snyders to Minnesota Transfer as a component of the combination rates to points on the Northern Pacific and the Great Northern is unreasonable to the extent that it exceeds 8 cents, and that the present adjustment subjects it to unreasonable disadvantage. But complainant's real interest apparently is to secure reasonable and nondiscriminatory joint through rates from Snyders.

Complainant competes in Minnesota and North Dakota with lumber from northern Minnesota and Wisconsin, but principally with lumber from the Pacific coast. It shipped about 550 carloads to Minneapolis and St. Paul, Minn., and to points beyond, in 1912, and about 250 carloads in 1914. It attributes the decrease in its business to the rates. There is no showing that any of these shipments were consigned to destinations on the Northern Pacific or the Great Northern; neither is it shown that the rates are the primary cause of the difficulties encountered, nor that the volume of complainant's

business in these markets has been reduced by reason of conditions wholly connected with the rates in controversy. Complainant's evidence as a whole shows only what is apparent from an examination of the rates under discussion and a statement of the manner in which they are constructed.

Defendant Soo line shows that under the Minnesota distance scale the rate on lumber for 252 miles is 9.8 cents, and under the Michigan scale, 12.4 cents; that the Wisconsin Railroad Commission prescribed a joint scale for the Milwaukee and the North Western under which the rate for 252 miles is 10.7 cents; and that the present 9-cent rate from Snyders to Minneapolis yields a per ton-mile revenue of 7.1 mills.

Formerly defendant Northern Pacific participated in joint rates from Snyders to Fargo and Wahpeton, N. Dak., which were established to meet the short-line competition of the Milwaukee. The Great Northern participated in similar joint rates to Fargo, Wahpeton, and Fergus Falls, Minn. Effective September 1, 1916, these joint rates were canceled, and provision was made for the application of combination rates. The Northern Pacific does not now participate in joint rates on lumber from Wisconsin points to destinations in Minnesota and North Dakota.

The Northern Pacific observes that the combination rates from Snyders to points on its line in Minnesota and North Dakota, based on Minnesota Transfer, are lower than rates for similar distances from Minneapolis to points in Nebraska and Wyoming; and from Cloquet, Minn., to points equidistant in North Dakota and Montana involving three-line hauls, but without showing similarity of transportation conditions.

It is shown by the Great Northern that the combination rates on lumber from Snyders to points in Minnesota and North Dakota, based on Minneapolis, are appreciably lower than its local rates for similar distances from Minneapolis and Duluth, Minn., to main-line points in North Dakota; that its rates from Minneapolis to its main-line points in North Dakota are lower than the rates from Minneapolis to points equidistant in South Dakota on the North Western and the Milwaukee; and that it participates in joint through rates from Snyders to points on its Willmar, Sioux Falls & Yankton branch in southern Minnesota, South Dakota, and Iowa, lower than the Minneapolis combination; but that these joint rates were established to meet the short-line competition of the North Western and the Milwaukee and are not a fair measure of the rates to all points on defendants' lines. Defendants also submitted statements showing that effective January 23 and March 27, 1915, respectively, following the enactment of the so-called Cashman law in Minnesota,

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they reduced their interstate rates on lumber from Minneapolis to points in North Dakota, and urge that the present rates are too low.

Complainant refers in its brief to lower rates from points in groups situated less distant from Minnesota Transfer than is Snyders. The grouping relation is not in issue, however, and the record is not sufficiently comprehensive to warrant a finding with respect thereto. The mere existence of combination rates rather than joint rates on lumber from Snyders to the destinations in controversy, without a showing of unreasonableness or undue prejudice, does not of itself make out a case justifying corrective measures, and it does not appear that there is public necessity or demand for the joint rates sought.

We find that the rates assailed are not shown to be unreasonable or unduly prejudicial, and an order will be entered dismissing the complaints.

43 I. C. C.

No. 7790.
**AMERICAN NATIONAL LIVE STOCK ASSOCIATION
ET AL.**

v.
OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted October 28, 1915. Decided February 20, 1917.

1. Rates on cattle and calves from certain points in Utah, Idaho, and Oregon to Los Angeles, Cal., not shown to be unreasonable.
2. Rates on sheep and goats in double-deck cars from points in Utah, Idaho, and Oregon to Los Angeles found to be unreasonable to the extent that they exceed the rates contemporaneously maintained on cattle in carloads from and to the same points, and this relationship of rates prescribed for the future.
3. Defendants required to establish joint rates on hogs in single-deck cars, from points in Utah, Idaho, and Oregon to Los Angeles, not in excess of 90 per cent of the rates contemporaneously maintained on cattle in carloads from and to the same points.

T. W. Tomlinson for complainants.

S. W. McClure for National Wool Growers' Association, intervenor.

A. P. Ramstedt, John W. Graham, and A. L. Freehafer for Public Utilities Commission of the state of Idaho.

H. A. Scandrett for Oregon Short Line Railroad Company.

A. S. Halsted for San Pedro, Los Angeles & Salt Lake Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are voluntary organizations composed of live-stock dealers and various local live-stock associations. By complaint, filed March 1, 1915, as amended, they allege that defendants' rates on hogs, cattle, calves, sheep, and goats from points in Utah, Idaho, and Oregon on the Oregon Short Line Railroad, hereinafter called the Short Line, to Los Angeles, Cal., are unreasonable. The rates on hogs are combinations made on Ogden or Salt Lake City, Utah; the other rates assailed are joint through rates. The establishment of reasonable joint rates on hogs, sheep, and goats, in single-deck and double-deck cars, and reasonable rates on cattle and calves, is prayed. The Public Utilities Commission of Idaho intervened on behalf of Idaho live-stock dealers.

The rates on hogs assailed are composed of the Short Line's locals to Ogden or Salt Lake City and the rates maintained by the San

Pedro, Los Angeles & Salt Lake Railroad, hereinafter called the Salt Lake, beyond. In supplement No. 8 to its tariff 95-A, I. C. C. No. 386, filed to take effect November 6, 1914, the Salt Lake proposed to increase its rate on hogs of \$92.50 per 36-foot single-deck car, from Salt Lake City to Los Angeles, to \$106.50, and in *Rates on Hogs*, 34 I. C. C., 627, we found that the proposed rate had been justified.

Complainants request the establishment of joint through rates by way of the Salt Lake on cattle, and on sheep in single-deck and double-deck cars, from all points on the Short Line to Los Angeles, on the basis of the distance scale of rates prescribed in *American National Live Stock Assn. v. S. P. Co.*, 26 I. C. C., 37, and 32 I. C. C., 515. In that case we prescribed maximum rates on fat cattle, feeders, sheep, and goats in carloads from points in Arizona to Los Angeles and other California points for distances up to 1,000 miles, and permitted additional charges of \$5 per car for two-line hauls and \$2.50 per car for branch-line hauls. The rate there prescribed for 1,000 miles was \$6 per car higher than the rate prescribed for 900 miles. Complainants ask that this scale be extended by adding \$6 per car for each 100 miles up to 1,300 miles, in order to provide rates for the greater distances involved in the present case.

The live-stock industry in Idaho, particularly with respect to hogs, began to develop with the institution of state and federal irrigation projects. The hog industry in that state is steadily increasing. Four hundred carloads of hogs were shipped to Los Angeles in 1913 and 1,050 carloads in 1914. At the hearing it was stated that the movement would be greater in 1915. The Los Angeles packers buy hogs on the basis of the Kansas City, Mo., or Omaha, Nebr., market price, plus freight from those points to Los Angeles. Idaho is also an important sheep-producing state, practically all of the lambs and sheep, except those kept for breeding purposes, being shipped to market. This is a seasonal movement, the majority of the lambs being shipped east between June and the latter part of October and the balance fattened for shipment to the Pacific coast between the months of November and April, the principal movement being to Los Angeles. In 1913, it is stated, 250 double-deck carloads of sheep were shipped from Short Line points to Los Angeles, and in 1914, 400 carloads. The movement of cattle shipments is not so great as that of hogs or sheep, but it was shown by defendants' exhibit that 92 carloads of cattle were shipped from Short Line points to Los Angeles by way of the Salt Lake during the year 1914.

The distance from Salt Lake City, the eastern terminus of the Salt Lake, to Los Angeles, is 784 miles; therefore the greater part of the haul under the rates attacked is over the lines of the Salt Lake. Defendants testify that the cost of operation on that road is as high

as, and perhaps higher than, on other roads in this general territory, while traffic is disproportionately light. The following is quoted from the report in *Rates on Hogs, supra*:

It [the Salt Lake] shows that between Salt Lake City and Los Angeles it operates through desert country from Callente, Nev., to Daggett, Cal., over 800 miles, where traffic is scarce and the cost of operation high on account of the difficulty in obtaining water and the necessity of paying employees higher wages than the prevailing wages in other sections of the country. It states also that during a considerable part of the year the temperature in this territory is extremely high, causing considerable shrinkage and resulting in loss and damage claims on live-stock shipments.

Except for the suggestion that portions of the haul involved in connection with the rates assailed in that case and in the present case are through desert country, there is nothing in the record to indicate such a similarity of transportation circumstances and conditions as would warrant the establishment of a scale of rates from and to the points involved in the present case on the basis of the scale prescribed in *American National Live Stock Asso. v. S. P. Co., supra*. Defendants contend that the rates here attacked are in line with rates from the same points of origin to other markets, and their exhibits indicate that rates on cattle and sheep to San Francisco, Cal., by way of the Short Line and the Southern Pacific average about \$4 per car higher than the assailed rates to Los Angeles for practically the same distances. The rates on hogs to Los Angeles and San Francisco from this territory apparently are about the same. Exhibits introduced by defendants comparing the rates from representative Short Line points to Portland, Oreg., Tacoma, Wash., and San Francisco with the rates from the same points to Los Angeles, indicate average car-mile earnings on hogs, cattle, and sheep to Portland of 16.2, 16.5, and 16.5 cents, respectively; to Tacoma of 14.8, 15.6, and 15.6 cents, respectively; to San Francisco of 13.4, 16.5, and 16.9 cents, respectively; and to Los Angeles of 12.9, 15.7, and 16 cents, respectively. It is urged that the Short Line rates from Idaho points to Portland are made to meet the competition of northern lines from Montana points. We find that the rates on cattle and calves assailed are not shown to be unreasonable.

Complainants contend that in fixing the relationship between the rates on hogs and the rates on cattle the customary actual average loading of hogs and cattle in the territory involved should be considered. On the basis of an average car loading per 36-foot car of 24,000 pounds on cattle and 17,000 pounds on hogs, the rates on hogs would, they argue, average about 81 per cent of the rates on cattle. They ask joint rates on hogs in single-deck cars not in excess of 80 per cent of the rates on cattle. The present rates on hogs from various originating points on the Short Line range from approximately 90 to 95 per cent of the rates on cattle. In *Investigation of*

Alleged Unreasonable Rates on Meats, 22 I. C. C., 160, 23 I. C. C., 656, the Commission fixed rates on hogs which, based on the minimum weights therein set forth, are from 10 to 12 per cent lower than the rates on cattle prescribed in that case. Rates on hogs were not involved in *American National Live Stock Asso. v. S. P. Co.*, *supra*, but, following the decision in that case, the interested carriers voluntarily established rates on hogs ranging from 89 to 92 per cent of the rates on cattle. From a consideration of all the circumstances we are of opinion and find that defendants should be required to establish and maintain, from and to the points involved, joint rates on hogs in single-deck cars not in excess of 90 per cent of the rates contemporaneously maintained on cattle from and to the same points, and that the present rates on hogs are and for the future will be unreasonable in so far as they exceed that basis.

Complainants ask for rates on hogs in double-deck cars that will not exceed by more than 5 per cent the rates on cattle, and it was testified that shippers would prefer to use double-deck cars if it would effect any saving in freight rates. Defendants claim that they have no double-deck equipment suitable for hog shipments, as the cars used for sheep are not strong enough to sustain the added weight and in the mountainous country traversed would be top-heavy and unsafe. The record is very meager as to the desirability of this service, and there does not appear to be any present necessity for requiring its establishment in this territory.

Complainants show that the present through rates on sheep in double-deck cars are \$3 per car higher than the rates on cattle. Defendants admit, in the light of many decisions by this Commission, that the rates on sheep in double-deck cars should not exceed the rates on cattle between the same points and have expressed a willingness to amend their tariffs accordingly. We find that the present rates on sheep and goats in double-deck cars from and to the points involved are and for the future will be unreasonable to the extent that they exceed and may exceed the rates contemporaneously maintained on cattle in carloads from and to the same points.

It was conceded by complainants that, as practically all sheep and lambs moving to market in the west are handled in double-deck cars, rates applicable to single-deck cars are of little importance in that territory, except for the unusual movement of small shipments. It is therefore unnecessary to consider here rates on sheep in single-deck cars.

An order will be entered in accordance with the views expressed herein, but the findings here made are without prejudice to what we may determine upon on the broader record to be made in *Live Stock and Products Case*, Docket No. 8436, now in process of investigation.

No. 8591.¹

BAGDAD LAND & LUMBER COMPANY

v.

GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL.

Submitted March 27, 1916. Decided February 20, 1917.

1. Charges collected on shipments of certain commodities from Pittsburgh, Pa., and Columbus, Ohio, to Milton, Fla., found to have been unreasonable to the extent that they exceeded the charges that would have accrued at the aggregates of the rates to and from Pensacola, Fla.
2. A shipment consisting of castings, a steam cylinder, and a shaft from Kalamazoo, Mich., to Milton, found to have been overcharged. Reparation awarded.
3. Charges collected on a carload of turpentine still fixtures shipped interstate from Paxton, Fla., to Bagdad Junction, Fla., not shown to have been unreasonable.
4. Application for authority to continue to charge rates on turpentine still fixtures from Paxton to Pensacola, Fla., lower than the rates contemporaneously charged to Bagdad Junction, an intermediate point, denied.

G. M. Stephen for complainant.

E. H. Dulaney for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business, with an office at Milton, Fla. By complaints, filed January 12, 1916, and by an amendment to the complaint in No. 8591, filed at the hearing, it alleges that the charges collected on less-than-carload shipments of certain commodities from Pittsburgh, Pa., Kalamazoo, Mich., and Columbus, Ohio, to Milton, in September, 1912, and February and March, 1913, and on a carload of turpentine still fixtures, shipped interstate from Paxton, Fla., to Bagdad Junction, Fla., in February, 1914, were unreasonable, unjustly discriminatory, and in violation of the fourth section. Reparation is asked and the establishment of reasonable rates for the future. The claims were filed with the Commission informally within the statutory period. That portion of Louisville & Nashville Railroad Fourth Section Application No. 1952 wherein authority is sought to maintain rates on turpentine still fixtures from Paxton to Pensacola, lower than the rates contemporane-

¹ The proceeding also embraces complaint in No. 8591 (Sub-No. 1), Same v. Louisville & Nashville Railroad Company, and a portion of Fourth Section Application No. 1952.

ously maintained on like traffic to Bagdad Junction, and other intermediate points, was heard with the complaints. Rates are stated in cents per 100 pounds. *

No. 8591 relates to the shipments from Kalamazoo, Pittsburgh, and Columbus. The shipment from Kalamazoo consisted of castings, a steam cylinder, and a shaft, aggregating 3,120 pounds, and moved in September, 1912, by way of the Grand Rapids & Indiana Railway to Richmond, Ind., the Pittsburgh, Cincinnati, Chicago & St. Louis Railway to Louisville, Ky., and the Louisville & Nashville Railroad, hereinafter called the Louisville & Nashville, through Pensacola, thence to Milton. Charges were collected thereon in the sum of \$35.09. A combination rate of 99 cents, based on Pensacola, was legally applicable, so that the shipment was overcharged \$4.20.

The following table shows details as to the shipments from Pittsburgh and Columbus, both of which moved through Pensacola:

Date.	Point of origin.	Destination.	Route.	Commodity.	Weight.	Ohio River combinations legally applicable. ¹	Charges collected.	Pensacola combinations.
Mar. 8, 1913	Pittsburgh, Pa.	Milton, Fla.	P., C., C. & St. L.; L. & N.	Locomotive springs.	Pounds. 580	Cents. 69.0	\$4.01	Cents. 83.0
Feb. 1, 1913	Columbus, Ohio.	...do....	...do.....	Chain.....	385	68.5	2.64	47.0

¹ No joint through rates were in effect, but defendants' tariffs provided specifically for the construction of through rates by combinations on the Ohio River.

The specific rates applicable on the shipments from Pittsburgh and Columbus exceeded the respective Pensacola combinations for which no justification appears. Defendants' tariffs do not now provide for the construction of through rates from Pittsburgh and Columbus to Milton by combinations on the Ohio River and therefore the lowest combinations apply. The former departures from the fourth section were protected by appropriate fourth section applications.

We find that the charges collected on the shipment from Kalamazoo were illegal to the extent that they exceeded the charges that would have accrued at the rate of 99 cents per 100 pounds legally applicable and that the charges collected on the shipments from Pittsburgh and Columbus were unreasonable to the extent that they exceeded the charges that would have accrued at the respective aggregates of intermediate rates contemporaneously in effect to and from Pensacola. We further find that complainant made the shipments from Kalamazoo as described and paid and bore charges thereon, herein found to have been illegal; that it has been damaged to the extent of the difference between the charges collected and the charges that would have accrued on the basis of the rates herein

found to have been legal; that it made the shipments from Pittsburgh and Columbus as described, and paid and bore charges thereon herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges collected and the charges that would have accrued based on the Pensacola combinations; and that it is entitled to reparation in the sum of \$1.77, with interest, from the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company and the Louisville & Nashville Railroad Company, and in the sum of \$4.20, with interest, from the Grand Rapids & Indiana Railway, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, and the Louisville & Nashville Railroad Company.

No. 8591 (Sub-No. 1) involves the charges collected on a carload of turpentine still fixtures shipped from Paxton to Bagdad Junction in January, 1914. The shipment weighed 21,600 pounds, and moved by way of the Louisville & Nashville through the state of Alabama. Charges were collected thereon in the sum of \$138.24 at the second-class rate of 64 cents, minimum 15,000 pounds. Complainant alleges that these charges were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 48 cents.

This shipment was a part of complainant's dismantled plant at Paxton, and a future movement from that point is unlikely. The bill of lading covering the shipment shows Munson, Fla., as the point of destination. Munson is a local station of the Florida & Alabama Railroad, about 22 miles from Bagdad Junction, at which point the Florida & Alabama Railroad connects with the Louisville & Nashville. As the bill of lading covering this shipment shows destination Munson, Fla., it indicates that apparently the shipment was handled as a through movement to Munson, but there are no further details with respect to the actual character of the transportation. If the Florida & Alabama Railroad participated in the handling of this traffic as a through interstate shipment, it did so without having on file with this Commission any lawful tariffs, and we are unable to determine the lawful charges to Munson.

Complainant submitted no evidence in support of its allegations of unreasonableness and discrimination, but stated that the issues were identical with the issues in *Bagdad Land & Lumber Co. v. L. & N. R. R. Co.*, Docket No. 6945, then pending upon rehearing, and asked that this case be disposed of in accordance with the final decision in that case. The shipments described in Docket No. 6945 were also a part of complainant's dismantled plant at Paxton and moved to Milton, which is located 1 mile east of Bagdad Junction. The opinion in Docket No. 6945 has since been issued and is reported in 39 I. C. C., 473. In that case we found that the evidence submit-

ted was not sufficient to show that the rates charged were unreasonable, and that in view of the improbability of future shipments between the points involved, there seemed to be no reason for the establishment of commodity rates for the future, except to afford a basis for allowing reparation, and the complaint was dismissed. Accordingly, an order will be entered dismissing the complaint in No. 8591 (Sub-No. 1).

The Louisville & Nashville offered no evidence in support of its fourth section application heard with the complaints, and the application will be denied to the extent it is here involved.

Appropriate orders will be entered.

No. 8388.

WISTAR, UNDERHILL & NIXON

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted April 27, 1916. Decided February 20, 1917.

Complainants found to have been damaged in connection with the transportation of two carloads of lumber from Pearch, Va., to Struthers, Pa., because of the refusal of the initial carrier to receive the shipments for transportation over an available route originally specified by the shipper. Reparation awarded.

T. Noel Butler for complainants.

J. S. Patterson for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are R. W. Wistar, F. S. Underhill, and T. N. Nixon, copartners, engaged in the wholesale lumber business under the name of Wistar, Underhill & Nixon, with an office at Philadelphia, Pa. By complaint, filed October 9, 1915, it is alleged that complainants were subjected to unjust and unreasonable freight and demurrage charges, on two carloads of lumber shipped from Pearch, Va., to Struthers, Pa., because the Chesapeake & Ohio Railway, hereinafter called the Chesapeake & Ohio, refused, in violation of section 15 of the act, to receive the lumber for transportation over the route originally specified by the shipper. Reparation is asked and an order requiring

defendants to cease and desist from the violations of section 15 of the act.

On January 15, 1915, complainants, through their agent, tendered two carloads of lumber to the Chesapeake & Ohio at Pearch under bills of lading providing for transportation to Struthers and bearing routing as follows: "C. & O., H. V., Penna. lines, P. R. R. del'y." The Chesapeake & Ohio refused to execute the bills of lading and would not accept the lumber for transportation to Struthers over the lines of the carriers named, claiming that the only established through route was by way of its line to Potomac Yard, Va., and the Philadelphia, Baltimore & Washington and Pennsylvania railroads thence to Struthers. After considerable correspondence the Chesapeake & Ohio finally notified complainants that the lumber would be unloaded and sold if complainants insisted on the routing shown in the bills of lading. On February 10, 1915, complainants, under protest, directed the Chesapeake & Ohio to eliminate the intermediate routing and to forward the cars to Struthers for Pennsylvania Railroad delivery. The Chesapeake & Ohio thereupon issued bills of lading accordingly as of that date and forwarded the shipments by way of Potomac Yard. In the interim demurrage charges accrued on each car in the sum of \$21. The demurrage charges, together with freight charges in the sum of \$199.64, based on an aggregate weight of 99,820 pounds and a carload commodity rate of 20 cents per 100 pounds legally applicable over the route of movement, were paid and borne by complainants.

The Chesapeake & Ohio contends that there was no agreement, express or implied, among the carriers named in the bills of lading originally tendered to establish a through route and joint rate from Pearch to Struthers and therefore that it was under no legal obligation to execute the through bills of lading and to forward the shipments as originally directed by complainants. There is no merit in this contention. The Chesapeake & Ohio's tariff I. C. C. No. 4635, in connection with westbound basing book No. 1, Chesapeake & Ohio I. C. C. No. 4270, in effect at the time the shipments were originally tendered, named a joint sixth-class rate of 16 cents per 100 pounds applicable on lumber in carloads from Pearch to Struthers. All of the carriers named in the bills of lading tendered by complainants were parties to the tariff and, in connection with the Chesapeake & Ohio, formed an available route from Pearch to Struthers. The application of the rate was not limited by the tariff to any specific route. The 16-cent rate was therefore applicable over the lines named in the bills of lading originally tendered. Effective February 1, 1915, after the shipments were tendered to the Chesapeake & Ohio, this rate was increased to 17.8 cents per 100 pounds.

It is urged that the route specified by complainants was unreasonably long and circuitous as compared with the route by way of Potomac Yard over which a higher commodity rate applied, and that it was not intended by the publication of the above tariff to establish a joint through rate from Pearch to Struthers. The distance from Pearch to Struthers by way of the lines specified by the shipper is 808 miles; by way of Potomac Yard, about 620 miles. Carriers are bound by their published tariffs, which must be construed in accordance with the rules contained therein, and they can not lawfully deny to a shipper the right to have shipments moved at the established rate over an open and available route named in the tariff.

Section 15 of the act, as amended, provides that where at the time of delivery of property for transportation two or more through routes and through rates shall have been established to which the receiving carrier is a party, the shipper shall have the right to designate in writing by which of such through routes its property shall be transported, and makes it the duty of the initial carrier to route the property and issue a through bill of lading therefor as so directed.

We find that it was the duty of the Chesapeake & Ohio Railway Company to execute the through bills of lading originally tendered by complainants and to forward the shipments as directed; that as a result of its refusal to do so complainants were damaged in the amount of the demurrage charges collected, plus the difference between the freight charges collected and the freight charges that would have accrued at the rate of 16 cents per 100 pounds legally applicable, at the time the shipments were originally tendered, over the route specified by complainants; and that complainants are entitled to reparation from the Chesapeake & Ohio Railway Company in the sum of \$81.93, with interest. An order will be entered accordingly.

In view of the penalties provided in the act for a willful failure to comply with its provisions, no order for the future is necessary.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 914.
LOST OR DAMAGED FREIGHT REPLACEMENT.

Submitted December 15, 1916. Decided March 6, 1917.

Respondents have justified the cancellation of western trunk line rule providing for waiving the freight charges when portions of shipments have been lost or damaged and duplicates thereof shipped to replace such lost or damaged articles. Uniform rules to meet the situation recommended.

F. B. Townsend and *W. D. Burr* for respondents.

T. A. McGrath, W. P. Trickett, Frank S. Pool, and A. F. Clothier for protestants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

By tariff of the Western Trunk Line Committee it is provided that where a portion of a shipment is lost or damaged by the carrier, on which shipment all charges are paid, the carrier, in claim settlements, will cancel the freight charges on a duplicate of the lost or damaged portion shipped to replace the original, provided the duplicate portion is shipped by the same consignor to the same consignee from the same point of origin to the same destination over the same route as the original shipment. The larger number of the carriers in western trunk line territory are not parties to this rule, some having special rules applicable to their own lines. This rule was sought to be canceled by the tariff involved in this proceeding, published to become effective September 9, 1916, and on the protest of the Minneapolis Traffic Association suspended until January 8, 1917, and later suspended to July 8, 1917.

The effort to cancel the rule was made because of objections thereto by interested shippers, especially those represented by the National Implement & Vehicle Association whose members have frequent occasion to replace parts of shipments lost or damaged in transit. This association desires a rule which will permit the duplicate shipment to move from the place most convenient and by express or freight as may meet the demands of each particular situation, and the association and the protestants propose such a rule in lieu of the one sought to be canceled. Substantially the rule proposed is now in effect over the lines of the Minneapolis & St. Louis Railroad Company.

In central freight association territory there are rules providing for the free return for repair under certain circumstances of dam-

aged portions of shipments and the cancellation of freight charges on new portions sent to replace lost ones.

The liability of common carriers for the loss of or damage to shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Interstate Commerce Commission. This liability should be kept separate from the freight charges. *Larkin Co. v. E. & W. Transportation Co.*, 34 I. C. C., 106-108. The present rule, while perhaps of value to some shippers, operates to the disadvantage of others. Where a shipment of farm machinery or implements is made and one or more pieces lost or damaged, it is generally necessary that the lost or damaged piece be promptly replaced. To do this, shipment must be made from the most convenient point and by the most expeditious route.

The rule here sought to be canceled, as well as the one shippers propose, is but a method of discharging in part a damage claim with free transportation. In *L. & N. R. R. Co. v. Mottley*, 219 U. S., 467, the Supreme Court of the United States after quoting Conference Ruling No. 207, which among other things provides, "nothing but money can be lawfully received or accepted in payment for transportation," said:

The passenger has no right to buy tickets with services, advertising, releases, or property, nor can the railroad company buy services, advertising, releases, or property with transportation.

From all the facts of record we find and conclude that respondents have justified the tariffs under suspension and an appropriate order will be entered.

It was contended in the *Larkin Case*, *supra*, and appears from this record that rules relating to the replacement of lost articles or damaged portions of shipments to be of value must be the same by all carriers. We can not, with only the parties now before us, determine and prescribe such reasonable rules and regulations for general application. This is, however, a subject which should have the prompt and careful consideration of all carriers. There appears no reason why there may not be uniformity in this respect. Such rules should not limit the right of shippers to receive or recover the damages to which they would reasonably be entitled under the law; and it should be understood that nothing here said is intended in any way to limit such right. Neither is any language contained in our reports in the *Larkin Case* to be construed as precluding the carrier from allowing as an integral part of a claim for the property damage the transportation charges paid on the duplicate shipment.

INVESTIGATION AND SUSPENSION DOCKET No. 901.

CARLOAD MINIMUMS.

Submitted November 29, 1916. Decided March 6, 1917.

Proposed increased minimum weights on carloads of grain screenings, oat clippings, and oat dust from Fort Worth, Tex., and other points to various interstate points found justified. Orders of suspension vacated.

M. J. Dowlin for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and Texas & Pacific Railway Company.

F. R. Dalzell for Gulf, Colorado & Santa Fe Railway Company; Panhandle & Santa Fe Railway Company; and Missouri, Kansas & Texas Railway Company of Texas.

Ed. P. Byars for Fort Worth Freight Bureau.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

By schedules, filed to take effect August 15 and September 9, 1916, respondents proposed to establish graduated minimum weights on carload shipments of grain screenings, oat clippings, and oat dust when loaded in cars over 40 feet 6 inches in length, inside measurement, thereby increasing the minima for cars over that size. Upon protest by the Fort Worth Freight Bureau, of Fort Worth, Tex., these schedules of increased minimum weights were suspended until December 13, 1916, and later until June 13, 1917.

At the present time the rates on oats apply also on oat clippings, oat dust, and oat hulls. Grain screenings take corn rates subject to a minimum weight of 40,000 pounds, except that when the marked capacity of the car is less the marked capacity of car governs, but in no case less than 30,000 pounds. The minimum weight applicable to oats is generally 32,000 pounds. The exceptions to this general rule need not be stated in detail.

The minimum weights stated in the suspended schedules for grain screenings, oat clippings, and oat dust are as follows:

	Pounds.
In cars 40 feet 6 inches and under in length, inside measurement.....	40,000
In cars over 40 feet 6 inches in length, inside measurement, to and including cars 41 feet 6 inches in length, inside measurement.....	44,800
In cars over 41 feet 6 inches in length, inside measurement, to and including cars 42 feet 6 inches in length, inside measurement.....	48,800

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In cars over 42 feet 6 inches in length, inside measurement, to and includ-	Pounds.
ing cars 46 feet 6 inches in length, inside measurement.....	56, 800
In cars over 46 feet 6 inches in length, inside measurement, to and includ-	
ing cars 50 feet 6 inches in length, inside measurement.....	64, 800

Where the minimum weights shown above exceed the weight-carrying capacity of the car furnished the weight-carrying capacity of the car will govern as to minimum weight.

The graduated scale of increased minimum weights on oat hulls became effective August 15, 1916, and is now in effect.

Protestant testified that "oat clippings," "oat dust," "oat hulls," and "elevator dust" mean the same thing.

The proposed increases in the minimum weights are stated to be a part of the general purpose of western carriers to secure heavier loading as an economic measure and to conserve equipment.

In the protest against these schedules it is asserted that it is impossible to load grain screenings, oat clippings, and elevator dust to the proposed minimum weights. Copies of waybills covering four cars loaded with grain screenings and oat clippings, the only cars loaded with these articles that were hauled from Fort Worth by the Gulf, Colorado & Santa Fe for one year prior to the date of the hearing, on November 29, 1916, are presented, from which the contents, dimensions, and loading of the cars are shown to have been :

Article.	Dimensions.			Weight.
	Length.	Width.	Height.	
	<i>Ft.</i> <i>in.</i>	<i>Ft.</i> <i>in.</i>	<i>Ft.</i> <i>in.</i>	<i>Pounds.</i>
1. Sacked grain (oat) screenings.....	40 6	9 2	9 4½	53, 420
2. Sacked oat grain screenings.....	40 0	8 6	8 2½	41, 194
Sacked wheat grain screenings.....				
3. Sacked oat clippings.....	40 ½	9 2	9 2½	43, 880
4. Sacked oat clippings.....	40 3	8 8	9 3	53, 300

A witness for the Chicago, Rock Island & Pacific Railway Company testified that five carloads of grain screenings had been shipped via that line from Fort Worth during the months of March and April, 1916, and that a check of their records indicated that those cars were all that had been shipped for the entire year. The details respecting these cars follow :

Article.	Dimensions.			Weight.
	Length.	Width.	Height.	
	<i>Ft.</i> <i>in.</i>	<i>Ft.</i> <i>in.</i>	<i>Ft.</i> <i>in.</i>	<i>Pounds.</i>
1. Grain screenings.....	40 0	9 0	10 0	54, 100
2. Bulk grain screenings.....	40 0	8 6	8 1	40, 000
3. Bulk grain screenings.....	40 ½	8 6½	8 ½	47, 400
4. Bulk grain screenings.....	40 0	8 9½	8 0	45, 580
5. Bulk grain screenings.....	40 3½	8 6½	8 3	(1)

¹ Not given.

The loading of the fifth car was omitted, apparently through inadvertence.

Protestant contends that the cars shown in the above statements are larger than the standard cars in use in western territory; and that cars under 40 feet 6 inches in length, narrower and not so high, will not load 40,000 pounds of oat dust or oat clippings. Oat clippings and oat dust are not shipped in straight carloads, but are shipped as oat or grain screenings, which include various products. It is admitted that it is practicable to load the larger cars to the proposed minima, but it is argued that there will be delay in securing such large cars. It is respondents' duty to furnish, upon reasonable request, cars which will accommodate the prescribed minimum weights or other cars which can be used upon the same basis. The actual loading above shown does not indicate any difficulty about loading to the proposed minima.

We find that respondents have justified the proposed increased minimum weights.

The orders of suspension will be vacated as of May 1, 1917.

43 I. C. C.

No. 8533.
CUDAHY PACKING COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted March 28, 1916. Decided February 28, 1917.

Re-icing charge at Fort Madison, Iowa, on packing-house products shipped from Wichita, Kans., to points east of the Indiana-Illinois state line found to have been unreasonable and reparation awarded.

C. R. Hillyer and Karl D. Loos for complainant.

J. B. Coffey for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the packing-house business, with its principal office at Chicago, Ill., and a packing house at Wichita, Kans. By complaint filed December 16, 1915, it alleges that the charges collected by defendants for re-icing, at Fort Madison, Iowa, certain carloads of packing-house products shipped from Wichita to points east of the Indiana-Illinois state line between April 20, 1913, and September 15, 1914, inclusive, were unreasonable and unjustly discriminatory. Reparation is asked. The claims, except as to certain shipments in April, June, and July, 1913, were presented to the Commission informally March 18, 1915.

Prior to September 15, 1914, defendant charged \$2.50 per ton for ice and 40 cents per 100 pounds for salt furnished at Fort Madison for re-icing packing-house products from Wichita to points east of the Indiana-Illinois state line; and it was upon this basis that the re-icing charges in controversy were collected. There was contemporaneously applicable at Fort Madison, and also at points in Iowa and Illinois on or contiguous to the Mississippi River, a re-icing charge of \$2.50 per ton for ice, with no additional charge for salt and labor, on packing-house products from points on or east of the Missouri River to points east of the Indiana-Illinois state line. Effective September 15, 1914, defendant voluntarily reduced its re-icing charges at Fort Madison on traffic from Wichita to \$2.50 per ton, including the cost of salt and labor.

Complainant contends and defendant admits that the re-icing charges assailed were unreasonable and unduly prejudicial to the

extent they exceeded \$2.50 per ton for ice, including salt and labor, the charge contemporaneously applicable for re-icing packing-house products from points on and east of the Missouri River. We find that the re-icing charge assailed was unreasonable to the extent that it exceeded \$2.50 per ton for ice, including salt and labor; that complainant made the shipments as alleged and paid and bore re-icing charges thereon at the re-icing charge herein found to have been unreasonable; that it was damaged to the extent that the re-icing charges collected exceeded the re-icing charges that would have accrued based on the charge of \$2.50 per ton for ice, including salt and labor; and that it is entitled to reparation, with interest, on shipments not barred by the statute of limitation. The amount of reparation due can not be determined on this record and complainant should prepare a statement showing the details of the shipments not barred by the statute of limitation, in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendant for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

DANIELS, *Commissioner*, dissents.

43 I. C. C.

No. 7838.
OMAHA ALFALFA MILLING COMPANY
v.
UNION PACIFIC RAILROAD COMPANY.

Submitted July 21, 1916. Decided February 28, 1917.

1. Upon rehearing, rate for the interstate transportation of alfalfa meal in carloads from Kearney, Nebr., to Omaha, Nebr., not found to have been unreasonable.
2. Complainant not shown to have been damaged by the payment of a rate found to have been unjustly discriminatory. Complaint dismissed.

Edward P. Smith for complainant.

C. B. Matthai for defendant.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

In our original report in this case, 38 I. C. C., 351, we found that the rate of 14 cents per 100 pounds charged by defendant for the interstate transportation of certain carloads of alfalfa meal moved from Kearney, Nebr., to Omaha, Nebr., during the period from July 14, 1913, to August 7, 1914, was unjustly discriminatory. An allegation of unreasonableness was not sustained. The discrimination was removed prior to our decision, and as there was no proof that complainant was damaged by the payment of the discriminatory rate, the complaint was ordered dismissed. Complainant asked to have the case reopened and its petition was granted. A rehearing has been had and complainant has presented additional testimony, directed principally to the question of damages alleged to have been sustained by reason of the unjust discrimination. Rates are stated in cents per 100 pounds.

Between July 14, 1913, and August 7, 1914, complainant shipped 83 carloads of alfalfa meal from Kearney to its plant at Omaha. The transportation involved an interstate switching movement by the Illinois Central Railroad, as was shown in our original report. At that time the defendant's intrastate rate on alfalfa meal from Kearney to Omaha, fixed by the Nebraska State Railway Commission, was 10½ cents; its interstate rate was 14 cents. When the shipments moved complainant was not aware that they were interstate in character and purchased the meal f. o. b. Kearney. The selling

price of the feed into which it was manufactured was fixed on the basis of a freight rate of 10½ cents, which complainant believed was applicable on the alfalfa meal. It is in evidence that complainant purchases alfalfa meal at Kearney in competition with another Omaha manufacturer of animal feed, and that there is keen competition between them in the sale of their product. The transportation of shipments from Kearney to the plant of its competitor at Omaha does not involve an interstate movement, and the competitor can ship alfalfa meal from Kearney to Omaha at the 10½-cent intrastate rate. At the time of movement a rate of 10½ cents was available to complainant on alfalfa meal from Kearney to Omaha by way of the Chicago, Burlington & Quincy Railroad. The testimony relative to the competition between complainant and its Omaha competitor was general, and does not specifically show that complainant met this competition in the purchase of the alfalfa meal involved or in the sale of the product into which it entered. Other than showing that the Chicago, Burlington & Quincy maintained the 10½-cent rate from Kearney to Omaha, applicable on interstate shipments, practically no evidence was adduced by the complainant on the rehearing to establish the unreasonableness of the 14-cent rate charged. We have repeatedly held that the mere fact that the rate between two general points is higher over one route than over another does not establish that the higher rate is unreasonable.

We find that the rate assailed is not shown to have been unreasonable, and that complainant has not proven, with the certainty necessary to warrant an award of reparation in discrimination cases, that it was damaged by the payment of the unjustly discriminatory rate. *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226, 232.

An order will be entered dismissing the complaint.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 907.
L. C. L. MINIMUM HANDLING CHARGES.

Submitted December 1, 1916. Decided February 28, 1917.

A rule of the western classification provides for the assessment of loading and unloading charges of 1½ cents per 100 pounds on less-than-carload shipments transported at carload rates. Proposed change in this rule providing for the assessment of loading and unloading charges on such shipments on the basis of the carload minimum weights, found not justified.

H. C. Bush for respondents.

G. J. Bradley for Merchants & Manufacturers Traffic Association of Sacramento.

S. E. Semple for Stockton Chamber of Commerce.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By western classification No. 54, I. C. C. No. 12, filed to take effect September 1, 1916, respondents, parties thereto, proposed to change that portion of rule 18 of western classification No. 53, I. C. C. No. 11, which relates to the loading and unloading by the carriers of less-than-carload shipments upon which carload rates and minimum weights are applied because charges on that basis are lower than those which would accrue based on the less-than-carload rates and actual weights. The present rule provides a charge of 1½ cents per 100 pounds for loading and a like charge for unloading such shipments, but does not state in specific terms whether such charges will be based on actual weights or on minimum carload weights. In the proposed rule it is provided that such loading and unloading charges will be based upon the minimum carload weights. Upon protest by the Merchants & Manufacturers Traffic Association of Sacramento, Cal., the proposed provision was suspended until December 30, 1916, and later until June 30, 1917.

Respondents urge that if less-than-carload shipments are handled on the carload basis, loading and unloading charges should be assessed on the basis of the carload minimum; that the present rule intends that charges be assessed accordingly; and that the proposed rule was promulgated to remove any uncertainty in this respect. But the present rule does not provide for the assessment of loading and unloading charges on such shipments on basis of the carload

minimum weight, and respondents' contention that the carload minimum weight now governs is therefore not supported by their tariffs. It is also urged that loading and unloading charges based on actual weights of shipments do not, in most instances, cover the cost of the service, and compilations were introduced to substantiate this statement. The reasonableness of the charge of $1\frac{1}{4}$ cents per 100 pounds is not in issue, but rather the propriety of computing the charge upon the minimum weight attaching to the rate.

Respondents contend that the proposed method of assessing loading and unloading charges is analogous to the manner of assessing switching charges, and argue that full switching charges are collected on the car whether it contains a partial load or is loaded to the minimum weight.

Protestants' objection to the proposed rule is that it is unjust and unreasonable for respondents to charge for the loading or unloading of partial carloads on the basis of the carload minimum weight. Instances are cited which would result in charges from \$3.75 to \$10 per car greater than charges based on actual weights of shipments, or for actual services performed.

It is clear that reasonable charges may be assessed for the service of loading and unloading. There are good reasons for basing carload rates upon carload minima, but there is no apparent reason for basing loading or unloading charges on the carload minimum weight. The amount of the service performed for the transportation charge does not vary substantially with the variations in the weight of shipments below the minimum, while the amount of the service performed in loading and unloading varies directly with the quantity of freight in the car. The reasonableness of such charges depends upon the service performed on the traffic actually handled. If the compensation to respondents is insufficient to cover the cost of the service, the method proposed is not the proper course to remedy that condition.

We find that the suspended provision, in so far as it applies to interstate transportation, has not been justified and an order will be entered requiring its cancellation.

43 I. C. C.

No. 8276.
CYBUR LUMBER COMPANY ET AL.
v.
NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY
ET AL.

Submitted February 11, 1916. Decided February 28, 1917.

Upon complaint alleging that defendants have failed to establish through routes and joint rates on lumber and forest products from Cybur, Miss., on the complainant line, to certain destinations south of the Ohio River and praying the establishment of joint rates not higher than those applicable from Picayune, Miss., and the allowance of a division of 2 cents therefrom to complainant line, and that reparation be awarded to complainant lumber company, on the basis of 2 cents per 100 pounds, on shipments made prior to December 2, 1914, for unjust and unreasonable charges or as an allowance, under section 15 of the act, for a transportation service rendered by a shipper, and to complainant line in the same amount on shipments after that date, as a reasonable division of joint rates which should have been established, *Held*:

1. Rates applicable from Picayune to the destinations in question not found to be maximum reasonable rates for application from Cybur.
2. Rates on lumber and other forest products from points on the Cybur, Gulf & Northwestern Railroad to destinations in Alabama, Georgia, Louisiana, North Carolina, and South Carolina in excess of joint rates contemporaneously maintained on those commodities from stations on the Mississippi Central Railroad or the Pascagoula, Moss Point & Northern Railroad to the same destinations found to be unduly prejudicial to complainant lumber company; and defendants required to establish through routes and nonprejudicial joint rates from Cybur, Gulf & Northwestern points to those destinations.
3. Proportional rates on lumber originating at points on the complainant line, and destined to central freight association territory, when stopped at Slidell, La., for creosoting, should not exceed the proportional rates contemporaneously maintained for a similar movement of lumber from stations on the Mississippi Central Railroad east of Brookhaven, Miss.
4. Reparation denied.

John S. Burchmore and *Luther M. Walter* for Cybur Lumber Company and Cybur, Gulf & Northwestern Railroad Company.

Frank W. Gwathmey and *R. Walton Moore* for New Orleans & Northeastern Railroad Company; Alabama & Vicksburg Railway Company, and other southern carriers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

A short time prior to May 1, 1912, the Cybur Lumber Company, a corporation, hereinafter called the lumber company, acquired by purchase a tract of timber near Cybur, Miss., and two sawmills and a planing mill, located at Cybur, together with the railroad tracks and equipment theretofore used as a facility of the mill operations. In addition to logging spurs, there was a main track extending from the mill, 10.14 miles, to Picayune, Miss., on the New Orleans & Northeastern Railroad.

In October, 1914, the lumber company procured the incorporation of the Cybur, Gulf & Northwestern Railroad Company, and conveyed to that company, in exchange for all but three qualifying shares of its entire capital stock of \$75,000, the line of railroad between Cybur and Picayune, with certain equipment and other property, which theretofore had been used as a plant facility of the lumber company.

The lumber company, however, continued to use the tracks for the movement of logs to its mill and lumber from its mill to Picayune until December 2, 1914, on which date the operation of the line from Cybur to Picayune was taken over by and has since been conducted by the Cybur, Gulf & Northwestern Railroad Company, hereinafter called the Gulf & Northwestern.

The line of the Gulf & Northwestern is of standard gauge and is laid with 40-pound rails. It connects with a logging road owned by the H. Weston Lumber Company, which road extends from Picayune to Logtown, Miss., a point on the Pearl River, and access is had to the Gulf boat lines by way of the river. The equipment of the Gulf & Northwestern consists of two locomotives, one combination passenger and baggage car, and one box car. One of the locomotives is leased from the lumber company. The lumber company maintains logging spurs extending from the mill into the timber, which it operates with its own equipment. It is testified that probably those logging spurs will eventually be taken over by the Gulf & Northwestern.

The Gulf & Northwestern operates a mixed train for passengers, mail, and freight twice each way daily between Cybur and Picayune. From December 1, 1914, to November 1, 1915, approximately 7,500 local passengers were handled. During the same period the total freight traffic amounted to approximately 40,670 tons, of which 39,678 tons, or 97.56 per cent, consisted of lumber and forest products. In addition to the traffic of the lumber company, there is a small traffic in ties, logs, and charcoal by a few independent shippers. There is a store at Cybur, conducted by the R. J. Williams Mercan-

tile Company under an arrangement by which the lumber company receives a division of the profits. A considerable part of the traffic of the Gulf & Northwestern, other than lumber and forest products, consists of supplies of various kinds, such as merchandise, tools, and feed for the lumber company, and merchandise for the mercantile company. It thus appears that the Gulf & Northwestern is a bona fide common carrier controlled by a shipper.

On August 28, 1915, the lumber company and the Gulf & Northwestern filed their joint complaint alleging, in substance, that during the period from May 1, 1912, until December 2, 1914, the lumber company shipped, or caused to be shipped on its behalf, by way of Picayune, large quantities of rough and dressed lumber to various destinations, and that upon such shipments the New Orleans & Northeastern Railroad Company, hereinafter called the respondent, and its connections, charged the full tariff rates in effect from Picayune, without making therefrom any division or allowance to the lumber company for the service of transporting the lumber from its mill at Cybur to Picayune; that on December 2, 1914, and various dates subsequent thereto, defendants established joint rates with the Gulf & Northwestern on lumber and forest products to certain interstate destinations, out of which joint rates a division of 2 cents per 100 pounds is allowed to the Gulf & Northwestern for its haul to Picayune; that to other destinations, where no such joint rates have been established, no divisions or allowances have been made to the Gulf & Northwestern, although joint rates have been established by the trunk lines in connection with short lines of railroad serving competing sawmills in Arkansas, Mississippi, and Louisiana, out of which rates the short lines receive divisions in varying amounts, in no case on a lower basis than the divisions allowed the Gulf & Northwestern by defendants, and the competing sawmills have had continuously the benefit of group rates; and that on shipments moving to such destinations the Gulf & Northwestern collected, and collects, for the haul to Picayune its reasonable local rate of 3 cents per 100 pounds, by which amount the through rates charged exceeded and exceed just and reasonable rates. Sections 1, 2, 3, and 15 of the act are alleged to have been violated.

The prayer of the complaint is: (a) That the defendant carriers be required to establish joint rates for the future on lumber from Cybur to interstate destinations to which such rates have not already been provided, and to allow to the Gulf & Northwestern a division of 2 cents per 100 pounds; (b) that defendants be required to pay the lumber company, as reparation for unreasonable charges exacted or as an allowance under section 15 of the act, 2 cents per 100 pounds on lumber moved by it from the mill to Picayune prior to the incor-

poration and operation of the Gulf & Northwestern; and (c) that defendants be required to pay to the Gulf & Northwestern an allowance or division of not less than 2 cents per 100 pounds on all its shipments of lumber and forest products to points to which no joint rates were published, and upon which charges have been collected on the basis of the rates to and from Picayune. The complaint seeks the application from Cybur of the rates from the junction point in all cases.

The mill of the lumber company has an annual capacity of about 14,000,000 feet, or about 2,400 carloads of lumber. It manufactures principally yellow-pine lumber, timbers, car material, and railroad ties. The investment of the lumber company in the mill and the land is about \$400,000. The timber lands owned by the lumber company are principally beyond the terminus of the railroad, and are reached by the logging tracks of the lumber company. In a general way the lumber company competes with all manufacturers of yellow pine in the south. An important competitor is the J. J. Newman Lumber Company, with mills at Bude, Sumrall, and Hattiesburg, Miss., on the Mississippi Central Railroad, which it controls. That line extends from Hattiesburg, where it connects with respondent's line, westwardly 154 miles to Natchez, Miss., intersecting several trunk lines in its course. Other competitors are located on the adjacent trunk lines.

Prior to the beginning of operation by the Gulf & Northwestern all shipments by the lumber company were delivered by it to respondent at Picayune and waybilled thence at Picayune rates. The present blanket rates on lumber to central freight association territory apply from stations on the lines of the respondent, the Alabama & Vicksburg Railway, the Illinois Central Railroad south of Jackson, Miss., the New Orleans Great Northern Railroad, the Mississippi Central, and also from stations on certain additional lines. From stations, except junction points, on other short lines in that territory, with the exception of the Gulf & Northwestern, the rates are higher than the blanket rates; for example, the rates on lumber from stations on the Fernwood & Gulf Railroad, the New Orleans, Natalbany & Natchez Railway, the Kentwood & Eastern Railway, and the Natchez, Columbia & Mobile Railroad to central freight association territory are made by the addition of an arbitrary of from 1 cent to 2 cents to the rates from the junction points. In addition to the arbitraries, those short lines receive divisions out of the trunk line rates from the junctions.

In a tariff effective December 2, 1914, defendants published joint rates on lumber from stations on the Gulf & Northwestern to Ohio River crossings and generally to points north thereof in central

freight association territory, and out of such rates allow the Gulf & Northwestern a division of 2 cents per 100 pounds. The rates so published are the same as the rates contemporaneously maintained by defendants from Picayune to the same destinations. In other words, the junction rate has been extended back to the mill on the short line. The same tariff publishes through rates from points on respondent's line to destinations in the states of Alabama, Georgia, Louisiana, North Carolina, and South Carolina, but by an exception in the tariff the group rates from points on respondent's line, including Picayune, to points in those states are not applicable from the mill of the lumber company on the Gulf & Northwestern. Complainants contend that this exception is unreasonable and unduly prejudicial in that it makes the rates applicable from points on the Gulf & Northwestern exceed "rates on the group basis" contemporaneously maintained from stations on the Mississippi Central and other lines of the same character in the same general territory.

Tariffs on file with the Commission show that from points on the Mississippi Central and the Pascagoula-Moss Point Northern, part of the Alabama & Mississippi Railroad, both of which are industry owned or controlled, to two destinations in Georgia the rates are higher than, and to the remaining destinations are the same as, those from the trunk line junctions; that to destinations in South Carolina and North Carolina the junction point rates apply; that to destinations in Alabama the rates are higher than the rates from the junction points; and that to destinations in Louisiana, with the exception of rates to Slidell, New Orleans, and Port Chalmette in connection with the Mississippi Central, no joint rates are published.

With respect to the lumber company's claim for reparation, it will be observed that the rates applicable from Picayune are not assailed and that the alleged unreasonable combination rates paid after the Gulf & Northwestern commenced operations are not the basis, nor do they embrace the measure, of the relief prayed. It is also to be said that if a charge of discrimination or undue prejudice, because of divisional allowances to other tap lines, might be understood to be the basis of the Gulf & Northwestern's corresponding claim, no mention of it appears in complainants' requested findings of fact. As to the prayer for future relief, the Gulf & Northwestern is interested in joint rates only in so far as prospective divisions are concerned, while the lumber company seeks joint rates which shall not exceed those now applicable from Picayune. In this connection it should be stated that at the hearing defendants challenged our jurisdiction to fix divisions in this proceeding, in which for the first time an order prescribing joint rates is sought, and objected to the introduction of any evidence in support of such relief.

The record does not show that the rates applicable to the destinations here in question from Picayune are, in point of intrinsic reasonableness, the maximum rates which should be applied from Cybur. Excepting shipments to Slidell and New Orleans, which points were brought into question at the hearing, the traffic of the lumber company has moved almost wholly to points on or north of the Ohio River. However, counsel for respondent, although disclaiming specific authority to speak for it, expresses the assumption that his company would have no objection to joining in through rates with the Gulf & Northwestern, provided they were reasonable and respondent's revenues were protected.

Upon all the facts of record we are of opinion and find that rates on lumber and other forest products from points on the Gulf & Northwestern to destinations in the excepted states above named in excess of joint rates contemporaneously maintained and applied on the same commodities from stations on the Mississippi Central or the Pascagoula-Moss Point Northern to those destinations are and for the future will be unduly prejudicial to complainant lumber company and unduly preferential of shippers on the lines last named, and that through routes and nonprejudicial joint rates from Gulf & Northwestern points to those destinations should be established accordingly. The divisions allowed to the Gulf & Northwestern out of such joint rates should in no event exceed the maximum amounts fixed in our second supplemental report and order in the *Tap Line Case*, 31 I. C. C., 490.

Complainants contend, in effect, that the rates from Cybur to interstate destinations on shipments creosoted in transit at Slidell and on shipments to New Orleans for export are unjust and unreasonable. Rates are hereinafter stated in cents per 100 pounds.

Complainants observed that from Brookhaven, Miss., on the Mississippi Central at its junction with the Illinois Central, to New Orleans, 194 miles, the rate in connection with respondent's line is 7 cents, plus \$5 per car for stoppage at Slidell for creosoting, as against a rate of 8 cents from Cybur to New Orleans, 57 miles, with the same stop-over charge at Slidell; also that from Sumrall, Miss., on the Mississippi Central, to Cincinnati, Ohio, the rate is 22.5 cents, with privilege of stop-over at Slidell for creosoting without additional charge, while from Cybur to Cincinnati the rate is 24.5 cents, plus \$5 per car for the same transit service. The 7-cent rate from Brookhaven to New Orleans also applies by the direct line of the Illinois Central. From Mississippi Central stations west of Brookhaven the rate to New Orleans by way of respondent's line is 10 cents; from such stations east of Brookhaven and west of Hattiesburg the rate is 9 cents. It does not appear that from stations on

the Mississippi Central west of Hattiesburg any provision is made in the tariffs for creosoting in transit at Slidell. From Hattiesburg to New Orleans the rate is 7 cents, and by a provision in the tariff that rate includes the creosoting-in-transit service at Slidell. From Picayune the rate is 5 cents, and, contrary to complainant's understanding, no additional charge is made for creosoting in transit at Slidell. The rate to New Orleans from points on the Gulf & Northwestern is 3 cents higher than the rate from Picayune, as against 2 cents and 3 cents over Hattiesburg from the Mississippi Central stations east and west of Brookhaven, respectively. The addition to the Picayune rate is the Gulf & Northwestern's local rate of 3 cents. If this local rate were reduced to 2 cents shippers located on the Gulf & Northwestern would pay the same excess over the junction rate that is paid by the shippers on the Mississippi Central east of Brookhaven.

On lumber from Hattiesburg to Ohio River crossings and central freight association territory, generally, with stop-off at Slidell for creosoting, the rate is \$7.50 per car to Slidell, plus the blanket rate from Slidell to destination. On a similar movement from Picayune the rate is \$5 per car to Slidell, plus the blanket rate from Slidell to destination. On lumber from points on the Mississippi Central, Brookhaven, and east thereof, except Hattiesburg, to Ohio River crossings and central freight association territory generally, with stop-off at Slidell for creosoting, the rates are 6½ cents, and from stations west of Brookhaven 7½ cents, to Slidell, plus the proportional rate from Slidell to Ohio River crossings applicable to traffic destined to central freight association territory generally. For example, the blanket rate from all those points to Cincinnati is 21½ cents. On lumber stopped at Slidell for creosoting the rate is 6½ cents or 7½ cents to Slidell. After creosoting it is billed to Cincinnati at a proportional rate of 16 cents, making the total rate 1 cent or 2 cents additional for the stop-off at Slidell. On lumber from Cybur to Ohio River crossings and central freight association territory generally, with stop-off at Slidell for creosoting, the rate is 3 cents to Picayune, \$5 per car from Picayune to Slidell, plus the blanket rate of 21½ cents from Slidell to destination.

Inasmuch as the blanket rate on lumber from all points on the Mississippi Central, as well as from points on the Gulf & Northwestern, are the same to Ohio River crossings and central freight association territory generally, the cost to the shipper for the transit service at Slidell should be the same on lumber from originating points on both lines. This may be accomplished by establishing proportional rates to and from Slidell on lumber originating on the Gulf & Northwestern, when for destinations in central freight association territory, that will not exceed the proportional rates con-

temporarily maintained for a similar movement of lumber from Mississippi Central stations east of Brookhaven.

There remain for consideration the claims of the lumber company and the Gulf & Northwestern for reparation on the shipments which moved prior to, and from and after December 2, 1914, respectively. Aside from the fact that certain claims of the lumber company are barred by the statute of limitations, the record does not show that the transportation service upon which the claim is founded—a service wholly off of respondent's line—was one which defendants, or respondent, had ever undertaken, either jointly or severally, to perform, or that the complainant ever solicited rates which should include, or that the rates charged should have included, that service. Nor is there any basis for reparation on other grounds. Equally, with respect to the claim of the Gulf & Northwestern, the record affords no ground for an award on the basis of retroactive divisional allowances.

An order in accordance with the foregoing findings will be entered.

43 L. C. Q.

No. 8407.¹
STERLING SALT COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted April 17, 1916. Decided February 26, 1917.

Discontinuance of allowances to shippers for inside door protection for shipments of bulk salt in carloads not found unreasonable or unduly prejudicial. Complaints dismissed.

Charles W. Atwater, Samuel B. Clarke, and W. T. Chisholm for complainants.

T. H. Burgess, Parker McColleston, and J. S. Havens for defendants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

By tariffs which became effective in the month of February, 1915, the defendant carriers, the Pennsylvania, the Erie, the Lehigh Valley, the Buffalo, Rochester & Pittsburgh, and the Genesee & Wyoming railroads, canceled certain provisions in their tariffs by virtue of which it had been their practice (a) to furnish inside door protection for bulk freight, or (b) in case this protection was furnished by the shipper to reimburse him for the expense, not exceeding certain specified amounts. The complaint, brought by five companies engaged in producing rock or evaporated salt, asks for the restoration of the allowances and for reparation for expenditures incurred in furnishing so-called inside doors for their salt shipments since the dates on which the allowances were discontinued.

The plants of the complainants in these two proceedings are in the west central part of the state of New York, and their annual shipments exceed 400,000 tons of bulk salt, most of which moves to interstate destinations. Rock salt, after being brought from the mine, is crushed to various degrees of fineness and then distributed to bins, from which it is dropped through spouts directly into the cars, much as grain is loaded from elevators. Most evaporated salt is shipped in packages and is handled into the cars on trucks. But for shipments of salt in bulk inside door protection is

¹ The report also embraces complaint in No. 8407 (Sub-No. 1), *Le Roy Salt Company et al. v. Erie Railroad Company et al.*

said to be just as necessary as for shipments of grain in bulk. The protection is secured by nailing boards on the inside face of the door-posts of the cars. The height of the door protection depends upon the size of the load and varies from 2 feet to 4 feet. The cost also varies considerably but is approximately \$1 a car; and the former maximum allowance by these defendants on salt shipments was 50 cents a door, or \$1 a car. The average loading of a car of rock salt in bulk is about 31 tons, and of evaporated salt from 20 to 25 tons. The rates on all kinds of salt are usually the same and the carload minimum weight is 40,000 pounds.

Salt is shipped in ordinary box cars and originally was shipped only in packages. But for many years shipments have been made in bulk; and, generally speaking, the tariffs of the defendants have provided inside door allowances on such shipments for a long time. The Genesee & Wyoming made such payments as far back as 1898, but tariff provision therefor was not published until 10 years later. Tariffs containing such provisions were first filed by the Erie and by the Buffalo, Rochester & Pittsburgh in 1906; but such allowances had been made by those lines for several years prior thereto. The first such tariff of the Pennsylvania went into effect in 1909, and of the Lehigh Valley in 1913. The New York Central, while not a party defendant here, serves this territory by means of its connecting lines, and, although it has never itself paid any allowances for inside doors for salt shipments, it has participated in payments of this character made by the Genesee & Wyoming under joint through rates.

The complainants contend (1) that inside doors are a necessary part of the equipment which it is the carrier's duty to furnish, and that if shippers contribute material or services for this purpose they are entitled to reasonable compensation therefor under section 15 of the act; (2) that under the present tariffs inside doors for shipments of grain and anthracite coal are either furnished by the carriers or paid for by them; (3) that the carriers serving the central freight association territory continue such allowances on salt in bulk, and the eastern carriers, including the defendants, share the expense; (4) and that the discontinuance of the allowance is in effect an increase in the transportation rate, which the carriers are required by law to justify.

The carriers, on the other hand, contend that their duty ends with the furnishing of a standard car with ordinary doors; that the so-called inside door takes the place of containers and is installed for the shipper's convenience and benefit and results in a great saving of expense to him; that it is a general rule with all railway companies that no freight may be loaded against the outer door, it being the function of the door to prevent improper ingress and not to con-

fine the contents of the car; that inside door protection is analogous to bracing, blocking, etc., which is uniformly furnished by the shipper. They deny that floor boards or inside doors are a part of the car; on the contrary, the car is unloaded by the consignee and the boards pass into his possession. It would be impracticable, if not impossible, therefore, for the carriers to preserve the boards as a part of the car's equipment. The carriers also point out that when shipped in bags salt costs the dealer about \$1.50 a ton more than when shipped in bulk, and when shipped in barrels the price to the dealer is about \$2 a ton higher. Moreover, because of the greater convenience in unloading and the saving of expense for containers, nearly all large consumers desire their salt shipped in bulk. When shipped in containers inside doors are not required, but the salt may not be loaded so heavily as when the shipment is made in bulk.

The evidence deals comprehensively with the history of car-door protection for other commodities shipped in bulk, including grain, and with the practices of the carriers with reference thereto; but it is not necessary here to discuss details that have been fully reviewed in other cases. *New York Shippers' Protective Asso. v. N. Y. C. & H. R. R. Co.*, 30 I. C. C., 437; *Farmers' Cooperative Asso. v. C., B. & Q. R. R. Co.*, 34 I. C. C., 60; *Keystone Wood Co. v. P. R. R. Co.*, 37 I. C. C., 622. Anthracite coal is considered open-car freight, but is often shipped in box cars for the carriers' benefit, in order to secure return loading for foreign equipment and to retain open cars on their owners' lines. There is no commercial competition between salt and either grain or coal. As before explained, the price of salt to the dealer is materially less when shipped in bulk than when he has to bear the cost of bags or other containers. Salt in bulk is almost invariably shipped in box cars, and in order that the shipper may have the full benefit of the minimum carload weight the doors must be made secure against the escape of the salt during transportation. When a commodity is of such a nature and the carrier furnishes this protection in the form of an inside door, an additional expense is incurred; and this expense is obviously a factor that may properly be considered when the rate is fixed. Where the rate is shown to embrace that factor no additional charge should be collected from the shipper. If, however, the transportation rate does not include compensation for this special expense the shipper should expect to pay an additional charge commensurate with the additional cost to the carrier.

There is nothing of record here to indicate that the cost of this special protection for bulk salt at any time has been, or now is, included in the rate charged by the defendants for the carriage of that traffic in this territory. On the contrary, the record shows,

as stated, that for a long time salt was shipped only in bags or in other containers, and that no change was made in the salt rates after the practice had been inaugurated of shipping salt in bulk with inside doors to protect the shipment against loss in transit. The evidence also shows very conclusively that this protection may be installed more conveniently and economically by the shipper than by the carrier, and that the complainants prefer to furnish the inside doors themselves, if a proper allowance is made therefor. But since the evidence shows that the salt rates include neither the cost of the doors nor allowances therefor, we necessarily must conclude that the complainants are not entitled to the compensation they here seek for furnishing the doors themselves, unless to deny it would result in unjust discrimination because of similar payments to other shippers.

At the hearing and upon their brief it was urged by the complainants that the continued practice of the defendants of contributing, under joint rates, to allowances made by the central freight association lines in connection with salt shipments to eastern destinations, while declining to pay any allowances upon most of the complainants' interstate shipments, is unduly prejudicial. The probable loss of tonnage to competing lines was assigned by the defendants as the reason for this continued participation, which is inconsistent with the general position they take toward the allowances involved on this record. Rock salt is produced at Detroit, and is shipped in bulk in competition with that produced by the complainants. The mine at Detroit is served by the Wabash Railroad, and the defendants are said to share in the cost to that carrier of furnishing inside doors of an expensive type for its bulk salt traffic. It does not appear of record, however, that the rates charged for transporting bulk salt from Detroit either exclude or include a charge for the special inside door protection. None of the defendants here before us reaches Detroit with its own rails, and there is no showing that rock salt is produced elsewhere in the central freight association territory. Some salt is shipped into the trunk line territory from points in Ohio on the Chicago & Erie Railroad, and that carrier either furnishes special door protection or makes allowances to the shipper therefor; but the record will not justify any conclusion either as to the fact or to the extent of competition between such shipments and those of the complainants.

Because of rulings by the public service commission for the second district of New York and a decision of the court of appeals of that state, allowances for inside doors for bulk freight, including salt, are still made by the defendants on shipments moving wholly within the state of New York. Upon application to this Commission the de-

defendants were permitted to pursue the same course in respect of shipments from interior New York points moving over interstate routes to the port of New York, including New York City, Jersey City, Weehawken, and Hoboken. In making the request the intention was to prevent, rather than to create, discrimination by equalizing the charges and conditions under which salt may be shipped by the complainants to points within the lighterage limits of New York harbor over either state or interstate routes. On shipments from interior New York points destined to points outside the New York lighterage limits, such as Paterson and other neighboring points in New Jersey, as well as to interstate points generally, no allowances are made for the extra expense of special car-door protection. All shippers in the state of New York, including the complainants, may reach the lighterage limits of New York harbor, and other eastern markets, for the same aggregate charge and under equality of treatment in respect of special car-door protection of their salt shipments. The Michigan and Ohio shippers clearly have no advantage over the complainants in reaching the lighterage limits of New York harbor, and there is no proof that they have an advantage in reaching other markets.

Upon a full consideration of all the evidence of record, we find and conclude that while the practices of the defendants have not been shown to be either unreasonable in themselves or unduly prejudicial, they nevertheless are characterized by inequalities which we do not here approve, and which upon a broader record might be found to be unduly prejudicial. The interests of all concerned in this traffic demand that practices of the defendants and other carriers in this regard be harmonized upon a practicable and equitable basis as soon as possible.

An order will be entered dismissing the complaints.

43 I. C. C.

No. 9182.
NEW YORK HAY EXCHANGE ASSOCIATION
v.
NEW YORK CENTRAL RAILROAD COMPANY.

Submitted January 10, 1917. Decided March 6, 1917.

Because of the accumulation of hay in its warehouse in the city of New York, N. Y., the defendant has found it necessary for many years to declare embargoes from time to time to relieve the congestion. That method having proved unsatisfactory the defendant recently adopted a new system, whereby shippers are required to present permits issued by defendant's agent in New York as a condition precedent to the acceptance of shipments. These permits are issued in the first instance to wholesale dealers in hay in New York, the number of permits which a dealer is entitled to receive depending upon the size of his business as indicated by his total receipts of hay during three months selected by the defendant. Upon complaint alleging that the practice in question is unreasonable and unjustly discriminatory, and that it gives an undue preference to certain shippers; Held, That the practice is unlawful. Reparation denied because damage not proved.

Herbert Goldmark for complainant.

O. E. Butterfield and William Mann for defendant.

REPORT OF THE COMMISSION.

MEYER, Chairman:

The defendant maintains at Thirty-third street and Eleventh avenue, in the city of New York, N. Y., a warehouse for the receipt, storage, and distribution of hay. For many years there has been a more or less chronic condition of congestion at the warehouse, in part because of its inadequacy and in part because hay is forwarded by shippers in excess of the market requirements. Prior to August 31, 1916, the defendant attempted to avoid undue accumulations of hay at the warehouse by declaring embargoes from time to time. This policy was not as successful as the defendant desired it to be, principally because of the defendant's inability to limit the number of shipments during "open" periods. On the date named a new system was inaugurated, whereby shippers were required, as a condition precedent to the acceptance of their shipments, to present "permits" issued by defendant's agent at New York. These are issued in the first instance to wholesale dealers in New York, who must state in advance the name of the shipper, the point of origin, and the size of the shipment. The wholesale dealer then forwards the permit to the designated shipper for presentation to the defendant's local agent at point of origin, whereupon the ship-

ment is accepted and forwarded. The number of permits which a wholesale dealer is entitled to receive depends upon the size of his business as indicated by his total receipts of hay during the months of July and November, 1915, and April, 1916, selected by the defendant as typical. The complainant, a voluntary association composed of 24 wholesale dealers in hay at New York, alleges that the defendant's practice in this respect is unreasonable and unjustly discriminatory, and that it results in undue preference to some shippers and in undue prejudice to others. Reparation is asked for damages alleged to have been sustained.

The defendant's warehouse accommodates between 165 and 220 carloads of hay, the estimates of the parties differing somewhat as to its exact capacity. Approximately 80 carloads pass through the warehouse daily. The daily market demand for hay in New York is variously estimated at from 60 to 75 carloads. Several of the trunk lines, such as the Lehigh Valley, the Delaware, Lackawanna & Western, and the Erie, use the Brooklyn eastern district terminal as a distributing point, the facilities there provided being the only ones in Greater New York which compare in size with those of the defendant.

In determining the number of permits which should be issued to the New York dealers under the new plan, the defendant compiled a statement showing the number of carloads of hay received by each dealer during the three months regarded as typical. It was found that 15 dealers, whose names are given in the table which follows, received 86 per cent of the total. The defendant thereupon assigned arbitrarily to these 15 dealers permits for 124 cars, equivalent to 75 per cent of the lower estimate of the warehouse space, the number assigned to each dealer being in exact proportion to the number of the total cars which he received during the three months chosen. The result is shown in the following table:

	Number of cars received during the three months selected.	Percentage of total number received by the 15 dealers.	Car space allotted to each dealer.
.....	106	5.8	7
.....	123	6.8	9
.....	125	6.9	9
.....	236	13.1	16
.....	208	11.4	14
.....	164	9.1	11
.....	194	10.8	13
.....	71	3.9	5
.....	45	2.5	3
.....	68	3.8	5
.....	86	4.9	6
.....	114	6.3	8
.....	165	9.1	11
.....	93	5.2	7
.....	61	3.4	4

The car space allotted to each dealer was determined by applying the percentages in the second column to the car space of 124 cars, which represents 75 per cent of the total car space in the warehouse. The allotment of 75 per cent of the total space to these 15 dealers was arbitrary. The figures in the last column represent the number of permits which each firm may have outstanding at one time. When a dealer removes a number of carloads of hay from the warehouse he is entitled to have a corresponding number of permits issued to him.

The defendant considers the permit system as above described the only solution of the problem which confronts it, and it is the defendant's intention to establish that system permanently.

That the hay dealers are bitterly opposed to this system is clearly shown of record. Not only the smaller dealers but some of those to whom the larger number of permits had been allotted appeared at the hearing and expressed their emphatic disapproval of the permit system, and particularly of that feature of it whereby the defendants prescribe the number of permits which each dealer shall receive. They regard this as an unwarranted and unlawful attempt on the part of the defendant to restrict the size of their business. They maintain that it is impossible under the permit system for any dealer to gain an advantage over his competitors by reason of his individual ability or initiative. The dealers are almost unanimously in favor of the flat embargo method previously employed. Although they are inconvenienced during the "closed" periods, they have what they most desire—equality of opportunity—when the embargoes are "lifted."

In addition to this general objection, the dealers make numerous other criticisms of the permit system, which have resulted from their experience with it. In the first place, there is more or less friction between the dealers and the defendant's agent who issues the permits, caused usually by the latter's refusal to issue permits when in his judgment the applicant has already received as many permits as he is entitled to have. Dealers who are not included in the favored list of 15 above given can receive only such permits as the defendant's agent may see fit to assign to them. In one instance one of these dealers applied for permits and was at first told that he could have none because his name was not on the list, but later a permit for one car was issued to him. In another instance a shipper offered to sell three carloads of hay to one of the wholesale dealers. The latter, who desired to accept the offer, applied to defendant's agent for the necessary permits, which were refused. They were issued, however, to another wholesale dealer, who forwarded them to the shipper and bought the hay. Some of the hay comes from points in Michigan and Illinois. It usually requires some time to get the permits and forward them by mail to the point of shipment, and it frequently happens that the shipper, failing to receive the necessary permits

promptly from the New York dealers, makes other disposition of the hay, and the permits are returned unused. Sometimes a New York dealer receives offers from several shippers of hay. If he receives a permit and forwards it to one shipper the others feel that they are being treated unfairly. Dissatisfaction and ill feeling between dealers and shippers is the inevitable result. Apparently the permit system is as unsatisfactory to the shippers as it is to the New York dealers.

The complainant suggests that the embargo method previously employed be reestablished. The defendant's objection to this plan is that it has been found practically impossible to limit properly the number of carloads of hay offered for transportation during "open" periods. The defendant states that it has no way of ascertaining accurately the exact number of carloads of hay on its line at a given time. Complainant's suggestion that defendant's local agents be instructed to advise the New York office by wire as soon as a carload of hay is received is deemed impracticable by the defendant because of the large number of such local agents and because the telegraph system is already taxed to capacity.

We need not discuss the operation of the present system in greater detail, or dwell at greater length upon its disadvantages. It suffices to say that the system must be condemned because it is wrong in principle. One of the principal objects of the act to regulate commerce was to require carriers to adopt rules and regulations which would apply alike to all shippers, whether large or small. Admitting the good faith of the defendant in devising the permit system and recognizing the necessity of adopting severe measures to relieve congestion at certain times, the Commission can not countenance any arrangement whereby a carrier gives more favorable treatment to some shippers than to others under substantially similar conditions.

In its brief the defendant cites a number of cases in which the Commission viewed with approval the carriers' practice of distributing coal cars to coal operators in proportion to the ratings of their several mines. There is nothing in the record to show, however, that the distribution of cars to coal mines is fairly comparable to the allotment of space in a hay warehouse, and the defendant concedes that "the situation here presented is unique and must therefore be dealt with in view of its own surrounding circumstances."

We conclude and find, upon consideration of all the evidence, that the defendant's practice as above described is unreasonable and unjustly discriminatory, and that it results in undue preference to some persons and in undue prejudice to others. An order will be entered requiring the defendant to cease and desist from the practice herein found unlawful.

While we must condemn the permit system here in question, it may well be that carriers and shippers can together work out some modification of the present system which shall be free from the unjust discrimination shown of record. Nothing stated herein is condemnatory of that purpose.

The evidence of record with respect to the damages alleged to have been sustained is somewhat general in character. It is shown, for example, that in certain instances shippers offered by letter to sell hay to certain members of the complainant association if the necessary permits were forwarded, that the latter were unable to obtain the hay because of their inability to obtain permits, and that possible profits were thereby lost. Even if the defendant had continued its policy of declaring absolute embargoes, to which the complainant apparently has no objection, there would have been periods during which the New York dealers would be precluded from shipping hay. It can not be said, therefore, that the practice disapproved herein has resulted in damage to the complainant or its members, nor can the amount of the damage, if any was suffered, be determined upon the evidence before us. The prayer for reparation accordingly will be denied.

43 L. C. C.

No. 6624.

APPLICATION OF THE GRAND TRUNK RAILWAY COMPANY OF CANADA UNDER THE PROVISIONS OF SECTION 5 OF THE INTERSTATE COMMERCE ACT AS AMENDED BY SECTION 11 OF THE ACT OF CONGRESS OF AUGUST 24, 1912.

Submitted November 11, 1916. Decided March 13, 1917.

Upon rehearing, *Held*, That the existing service by water of the Canada Atlantic Transit Company is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that an extension thereof will neither exclude, prevent, nor reduce competition on the route by water here under consideration. The Canada Atlantic Transit Company will be required to file its tariffs in accordance with the provisions of the act to regulate commerce as amended by the Panama Canal act.

George F. Brownell, L. T. Michener, and W. H. Biggar for petitioners.

H. C. Barlow for Chicago Association of Commerce and Board of Trade of Chicago.

Frank Barry for Merchants & Manufacturers' Association of Milwaukee, Racine Chamber of Commerce, Sheboygan Chamber of Commerce, and Milwaukee Tanners' Freight Bureau.

S. J. Bolton for LaCrosse Shippers' Association and Association of Commerce.

Henry Bowen for Nairn Linoleum Company.

H. F. Burns for Rice Hicks Dry Goods Company.

L. L. Carling for Arbuckle Brothers.

W. H. Chandler for Boston Chamber of Commerce, Gloucester Board of Trade, and others.

E. H. Draper for Western Grocery Company and Iowa-Nebraska Wholesale Grocers' Association.

T. A. Gantt for Corn Products Refining Company.

William F. Garcelon for Arkwright Club.

George L. Graham for American Woolen Company, American Thread Company, and National Association of Wool Manufacturers.

George F. Hichborn for United States Rubber Company.

James C. Lincoln for Merchants Association of New York.

G. C. Bailey for E. W. Barley & Company.

Frank J. Ludwig for St. Albans, Vt., Grain Company and Charles M. Cox & Company.

John C. McAuliffe for Butler Brothers.

Charles Nelson Dodge for B. H. Howell Son & Company.

M. E. Markham for Carleton Dry Goods Company.

George B. Morrill for Maine Cannery Association, Burnham & Morrill Company, H. C. Baxter & Brother, and Portland Packing Company.

Stanton Pierce for George Borgfeldt & Company.

Logan Pittman for Loose Wiles Biscuit Company.

George E. Riels for Lawrence Chamber of Commerce.

George A. Schroeder for Chamber of Commerce of Milwaukee, Wis.

R. D. Sangster for Commerce Clubs of Kansas City and St. Joe, Mo., Atchison and Leavenworth, Kans., Omaha, Nebr., and Sioux City, Iowa.

Frank Vansant and *W. B. Barr* for Business Men's League of St. Louis.

E. C. Wilbur for M. E. Smith & Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, Commissioner:

In *Lake Line Applications under Panama Canal Act*, 33 I. C. C., 699, petitioner Grand Trunk Railway Company of Canada was denied permission longer to operate the Canada Atlantic Transit Company, a boat line which it owns and operates on the great lakes. Pursuant to a petition to rehear, the order entered with respect to the Canada Atlantic Transit Company was set aside and the case reopened for further hearing by order dated March 29, 1916. A further hearing was held September 27, 1916, at which time an important jurisdictional question was urged and further evidence was introduced in support of the contentions previously advanced by the petitioner.

Petitioner Grand Trunk Railway Company of Canada is a railroad corporation organized under the laws of the Dominion of Canada, owning and operating various lines of railroad within Canada, by act of the parliament of Canada dated May 16, 1905, chapter 75; 4-5 Edward VII was specifically authorized to acquire the capital stock of the Canada Atlantic Railway Company and the Canada Atlantic Transit Company. The Canada Atlantic Transit Company operates a line of boats from Depot Harbor, Ontario, on Georgian Bay, the western terminus of the Canada Atlantic Railway Company, to Chicago, Ill., and a line of boats from Depot Harbor to Milwaukee, Wis., plying on the international boundary waters between this country and Canada. The petitioner contends upon rehearing that the refusal to permit it longer to operate its boat line invades the right of free navigation of the international boundary

waters between this country and Canada, which is preserved to the inhabitants of each of said countries by treaties which have been in force for many years. That the Panama Canal act does not specifically provide that this treaty right shall be curtailed; that accordingly the Panama Canal act can not be construed as having any application to the ownership of the petitioner in the Canada Atlantic Transit Company; and that this Commission consequently has no jurisdiction to deny petitioner power longer to operate. In the view we now take upon the merits of this application, upon rehearing, under which the water service of the Canada Atlantic Transit Company as now operated may be extended, we deem it unnecessary to consider or decide this question.

The petitioner upon rehearing again contends that it does not compete with its boat line within the meaning of the provisions of the Panama Canal act, and that this Commission is without jurisdiction in the premises. The petitioner, in addition to the lines of railroad which it owns and operates within the Dominion of Canada, owns and operates certain lines of railway within the United States which reach Chicago, connecting with its Canadian lines. The petitioner joins in through routes and publishes joint through rates in connection with the lines from Chicago to Milwaukee, the other port served by its boats. In *Lake Line Applications under Panama Canal Act, supra*, we held that this condition brought about a transportation situation under which the petitioner does or may compete with its boat line within the meaning of the provisions of the Panama Canal act. Nothing shown upon the rehearing would warrant our changing this finding.

The Canada Atlantic Transit Company is a so-called differential line. Because the route from eastern territory to the ports served by this line is more circuitous than that of the more direct route, a somewhat lower scale of rates is made applicable via this line. For many years the transit company's rate has been lower by 10 cents per 100 pounds for first-class traffic from New York to Chicago than the rate of the so-called standard lake-and-rail routes and proportionately less for traffic of other classes. It appears from statements filed upon rehearing that the rates via the standard lake-and-rail routes from New York to Chicago are higher than the transit company's rates on the different classes of traffic as follows, namely: On first class, 19.2 per cent; second class, 17.4 per cent; third class, 17.1 per cent; fourth class, 15.4 per cent; fifth class, 13.6 per cent; and sixth class, 10.5 per cent. The standard all-rail rates from New York to Chicago are higher than the transit company's rates on the six classes of traffic, as follows, namely: On first class, 51.5 per cent; second class, 48.5 per cent; third class, 50

per cent; fourth class, 41.5 per cent; fifth class, 43.2 per cent; and sixth class, 38.4 per cent.

The transit company operates three steel vessels having an aggregate net registered tonnage of 7,118 tons and a cargo capacity of 14,000 net tons. During the season of 1914 it carried 848,727 tons of freight, and during the season of 1915, 821,824 tons. During the season of 1915, up to August 31, it carried 184,738 tons, while during the season of 1916, up to August 31, it carried only 162,610 tons. The transit company provides approximately three sailings per week, both eastbound and westbound, during the season of navigation, with substantially regular service. During 1915 its boats were in commission 205 days and made 68 round trips. During the last season, up to August 31, its boats had made 34 round trips. The traffic transported has its origin or destination at numerous points throughout a large territory in Canada and in the United States, including the terminal points Chicago and Milwaukee, and points generally in Wisconsin, Illinois, Iowa, Nebraska, and Kansas, and the southwest territory, New England, New York, and Canada, and the Canadian provinces, and also points abroad from which traffic is imported or to which it is exported. During the early part of the season of navigation last past the transit company handled over 34,000 separate and distinct consignments of freight. The traffic representative of many regular shippers and consignees located in the territory who have availed themselves of the service of the transit company appeared at the rehearing and testified to the satisfactory nature of that service, and uniformly expressed the desire that it be continued.

The service of the transit company was originally established to provide a western connection for the Canada Atlantic Railway, which otherwise would have ended in a transportation *cul de sac*. Thirty per cent of the gross earnings of the Canada Atlantic Railway Company during the season of navigation and 18 per cent of its earnings throughout the year are received on traffic destined to or received from the transit company. The service of the transit company was established solely as a supplement to and extension of the Canada Atlantic Railway. The traffic and business conditions in the territory served by the Canada Atlantic Railway have materially changed since its organization. Formerly this territory was a large producer of timber and lumber products, with the traffic incident to such production; but now that the timber resources have been largely depleted this traffic has greatly decreased, and there has not been, as yet, agricultural development or other local development which furnishes traffic to replace that formerly incident to the lumber projects. It is urged that the transit company is of increasing importance to the Canada Atlantic Railway, which is an integral part of the Grand Trunk

system. The transit company has always operated at a deficit after the payment of fixed charges. In 1913 the deficit was \$704,574; in 1914 it was \$860,453.

The Canada Atlantic Railway has always absorbed out of its rail revenue the deficit resulting from the operation of the transit company, because there has been no other way to secure the maintenance of the service performed by the transit company or to secure an equivalent water service west of Depot Harbor for the interchange of traffic to and from Lake Michigan ports. The Canada Atlantic Railway is the only railroad which reaches Depot Harbor. Neither the petitioner nor the Canada Atlantic Railway Company has ever refused to interchange traffic at Depot Harbor with any other vessel or carrier by water, or to form through routes or make joint rates or enter into arrangement for divisions of rates on an equitable basis with respect to the handling of lake and rail traffic. No request has ever been made to either of them for the making of such arrangement. It is stated on behalf of the petitioner that it heretofore has been, and now is, ready to make reasonable and proper arrangement for the establishment of such through route and joint rates in connection with any responsible water carrier or vessels carrying package freight to and from a connection with it at Depot Harbor, even if the service of the transit company continues under its present control.

It is stated on behalf of the petitioner that the elimination of the interest of the petitioner in the transit company would necessarily result in a discontinuance of the water service of that line, which is the only remaining differential rail and lake route to Lake Michigan ports. It is also stated that the Lake Line Association has been dissolved. It is said that the petitioner has not diverted or attempted to divert traffic from the boats of the transit company, and that neither the petitioner nor the transit company has acquired any monopoly of or lessened any competition upon the water route served by the transit company, and that the transit company has actively competed and will continue actively to compete with other existing rail and lake routes upon the great lakes.

From a full consideration of the record, upon rehearing we find that the existing service by water of the Canada Atlantic Transit Company is being operated in the interest of the public, and is of advantage to the convenience and commerce of the people, and that an extension thereof will neither exclude, prevent, nor reduce competition on the route by water here under consideration. The Canada Atlantic Transit Company will be required to file its tariffs in accordance with the provisions of the act to regulate commerce as amended by the Panama Canal act. An order will be entered in accordance with the views expressed herein.

INVESTIGATION AND SUSPENSION DOCKET No. 820.

FRUITS AND VEGETABLES.

Submitted January 4, 1917. Decided March 13, 1917.

Upon investigation of increased rates and changes in rules applicable to the transportation of domestic fresh fruits, vegetables, and melons from southern and southwestern territory, *Held:*

1. Increased carload and less-than-carload rates, minimum weights, and estimated weights from points east of the Mississippi River, justified.
2. Increased refrigeration charges from points in Louisiana on the line of the Louisiana Railway & Navigation Company, justified.
3. Increased rates on fruits, vegetables, and melons from points in Louisiana west of the Mississippi River which do not exceed the present rates from New Orleans or the rates to Colorado common points, justified.
4. Where the former rates from points in Louisiana west of the Mississippi River were not higher than the former rates from New Orleans or the rates to Colorado common points, the increased rates, to the extent to which they exceed the present rates from New Orleans or the rates to Colorado common points, or to which they increase the discrimination against intermediate points in violation of the long-and-short-haul rule of the fourth section, not justified.
5. Increased rates on potatoes from points in Arkansas, Oklahoma, Missouri, and Kansas, not justified.
6. Increased rates on vegetables of other kinds from Arkansas, Oklahoma, and Missouri, justified in part, but to the extent to which they exceed the differentials stated in the suspended schedules over the former rates on potatoes, not justified.
7. Increased rates on fruits from Arkansas, Oklahoma, and Missouri, not justified.
8. Increased rates on watermelons, cantaloupes, and muskmelons from Arkansas, Oklahoma, and Missouri, justified in part, but where the former rates were not higher than to Colorado common points, the increased rates, to the extent to which they exceed the rates to Colorado common points or to which they increase the discrimination against intermediate points in violation of the long-and-short-haul rule of the fourth section, not justified.

William Burger for Louisville & Nashville Railroad Company.

R. Walton Moore and *Frank W. Gwathmey* for Illinois Central Railroad Company, Mobile & Ohio Railroad Company, and others.

Thomas Bond, Fred H. Wood, C. S. Burg, George Thompson, W. F. Dickinson, Wallace T. Hughes, Henry G. Herbel, and Fred G. Wright for respondents operating west of the Mississippi River.

H. J. Wilson, C. M. Huber, and W. W. Alfred for Mississippi Truckers' Association and other protestants in central Mississippi.

Edward G. Davies for Roseland Truck Farmers' Association, Edward G. Davies Company, and others.

W. D. Tidwell and *G. W. Knight* for National League of Commission Merchants of the United States and Western Fruit Jobbers' Association of America.

A. E. Helm and *W. R. Scott* for Kansas Public Utilities Commission.

W. H. Young for Nebraska-Iowa Fruit Jobbers' Association.

C. D. Mowen for Fort Smith Traffic Bureau and Arkansas River Potato Growers' Association.

A. C. Slaughter for Iowa Fruit Jobbers' Association.

E. H. Hogueland and *W. O. Anderson* for Topeka Traffic Association and Kansas City Fruit & Produce Dealers' Club.

John A. Smith for New Orleans Traffic Bureau.

J. Richard Reuter for Chris. Reuter.

M. C. Moore for truck growers of Mississippi.

R. C. Cobb for Mobile Chamber of Commerce.

L. T. Rhodes for shippers of Baldwin county, Ala.

O. E. Childe for Traffic Bureau of Sioux City Commercial Club.

H. L. Bennett for Corporation Commission of Oklahoma.

W. C. North for Judsonia, Ark., Fruit & Vegetable Growers' Association.

Thomas H. Cobbs for Arkansas Orchard Planting Company, Bert Johnson Orchard Company, Patterson Orchard Company, and Amity Orchard Company.

C. C. Michael and *Robert W. Gees* for Fruit and Produce Industry of Kansas City.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

By schedules, filed to take effect in April and May, 1916, respondents proposed a general revision of the rates and regulations applicable to the transportation of domestic fresh fruits and vegetables from points in the state of Alabama and the contiguous portion of Florida, the states of Mississippi, Louisiana, Arkansas, and Oklahoma, the southern portion of Missouri and the western portions of Tennessee and Kentucky, to points of destination in the United States described generally as being situated on and north of the Ohio and Potomac rivers between Denver, Colo., on the west and the Atlantic Ocean on the east, including also certain points in southern Canada, and in Arkansas, Memphis and Nashville, Tenn., and Greenville and Vicksburg, Miss. Embraced in the revision are carload and less-than-carload rates on some 48 kinds of fruits,

melons, and vegetables; estimated package weights on certain of these commodities; carload minima on potatoes, melons, and onions without tops; and refrigeration charges from a small portion of southern Louisiana. Upon protests by numerous individual shippers, commercial and traffic associations, the Kansas Public Utilities Commission, the Mississippi Railroad Commission, and the commerce counsel of the state of Iowa, the schedules were suspended until February 13, 1917. The new rates which became effective upon the expiration of the suspension period are referred to herein as the "present" or the "increased" rates and those previously in effect are designated as the "former" rates.

The circumstances and conditions affecting the general rate adjustments from the fruit and vegetable producing territories east and west of the Mississippi River, as well as the increased rates on fruits and vegetables, are dissimilar in some respects, and the two territories are served in a large measure by different groups of originating carriers. These considerations have led the respondent east side and west side lines to present separately as groups their evidence in justification of the changed rates and rules, a method of presentation which will be followed in this report. Rates are stated in cents per 100 pounds unless otherwise indicated.

ORIGINATING TERRITORY EAST OF THE MISSISSIPPI RIVER.

The production in the territory east of the Mississippi River of fruits and vegetables for the northern markets is an industry of long standing. Respondents state that a low level of "missionary" rates was originally established for the purpose of developing the business; that while some of the individual rates have since been increased, many remain unchanged or have been reduced; and that with the establishment by the individual carriers, as occasion required, of specific commodity rates on each variety of fruits and vegetables, it followed naturally that particular rates were fixed with no definite relation to other rates on the same product or to rates on fruits and vegetables of other kinds, resulting in an adjustment from the territory as a whole that was "abnormal, full of inconsistencies, and not satisfactory to the shippers, the consignees, or the carriers."

It is urged that the fruit and vegetable products of this territory have greatly appreciated in value and that having become firmly established in the consuming markets they should now be made to bear a more equitable part of the total transportation burden commensurate with the increased costs of transportation and with rates from competing sections in the southeast and the southwest.

The idea of a general revision of rates originated with the east side lines, of which the Illinois Central, the Louisville & Nashville, the Mobile & Ohio, and the New Orleans & Northeastern roads are representative, and was suggested by many complaints against the former rates. Finding that a revision of the east side rates would be impracticable without a corresponding readjustment of rates from Louisiana, conferences were held in January, 1914, with the west side lines, and the conclusion was reached that rates from Texas and from other west side territory should also be revised. As the first step in the proposed general revision, increased carload rates on fruits and vegetables from Texas were filed, which in the *1915 Western Rate Advance Case*, 35 I. C. C., 497, referred to herein as the *Texas Case*, were found to have been justified. Respondents then proceeded to publish and file the schedules which were under suspension in this proceeding.

It is said that the primary object of the revision is not to secure increased revenues but proper relationships as between the rates on the various commodities and from the various producing points to the different markets; to eliminate numerous fourth section violations present in the former adjustment; to establish uniform estimated weights and minimum carload requirements; and to make such a revision as will enable the originating carriers, without shrinking their own revenues, to allow connecting lines in official classification territory the 5 per cent increase found justified in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325.

Numerous reductions as well as increases are involved. This, and the extent of the increases and reductions may be illustrated by the rates of the Illinois Central, which is the principal fruit and vegetable carrying line serving this territory. From New Orleans to 17 of the principal markets east and west of the Mississippi River, including such points as Kansas City, St. Paul, St. Louis, Chicago, Cincinnati, Louisville, Pittsburgh, New York, and Philadelphia, 447 rates are increased, 332 rates are reduced, and 37 rates are unchanged.

The rates on beans, for example, are increased to 5 points and are reduced to 12 points. The average increase is 5.6 cents, and the average reduction is 13.9 cents. On beets the rates are increased to 11 points and are reduced to 6 points, an average increase of 4.9 cents and an average reduction of 14.2 cents. On berries the rates are increased to 6 points and are reduced to 11 points, the average increase being 33.2 cents and the average reduction 19.5 cents. The rates on tomatoes are increased to 4 points by an average amount of 6.5 cents and are reduced to 13 points by an average amount of 14.2

cents. On potatoes there is a general increase averaging 7.5 cents. On lettuce the rates are increased to 7 points, reduced to 8 points, and left unchanged to 2 points, the average increase being 5.8 cents and the average reduction 14.6 cents. From quite a large group of Illinois Central and Yazoo & Mississippi Valley railroad stations between Baton Rouge and Ruddock, La., on the south and Vicksburg and Jackson, Miss., on the north to the 17 markets referred to, 661 rates are increased, 79 rates are reduced, and 76 rates are unchanged. As a general rule, the increases from interior points are relatively more numerous and extensive than those from New Orleans.

The total amount of additional revenue which the increased rates would yield is not of record, but that it would be substantial is indicated by exhibits showing that on the total movement of fruits and vegetables during the year 1915 from stations on the Illinois Central and the Yazoo & Mississippi Valley railroads south of the Ohio River the revenue would have been increased 5.96 per cent on carload shipments and 12.83 per cent on less-than-carload shipments, an average increase of 6.24 per cent on both classes. Other exhibits show that the increases to Chicago amount to about 7.2 per cent, to points in Iowa 4.4 per cent, and to central freight association territory, which with Chicago is the principal market for the products of this section, 15.78 per cent. The gross revenue derived from fruit and vegetable shipments originating on the southern lines of the Illinois Central and on the Yazoo & Mississippi Valley in the year 1915 was \$462,877.76, and under the increased rates would have been \$28,882.92 greater.

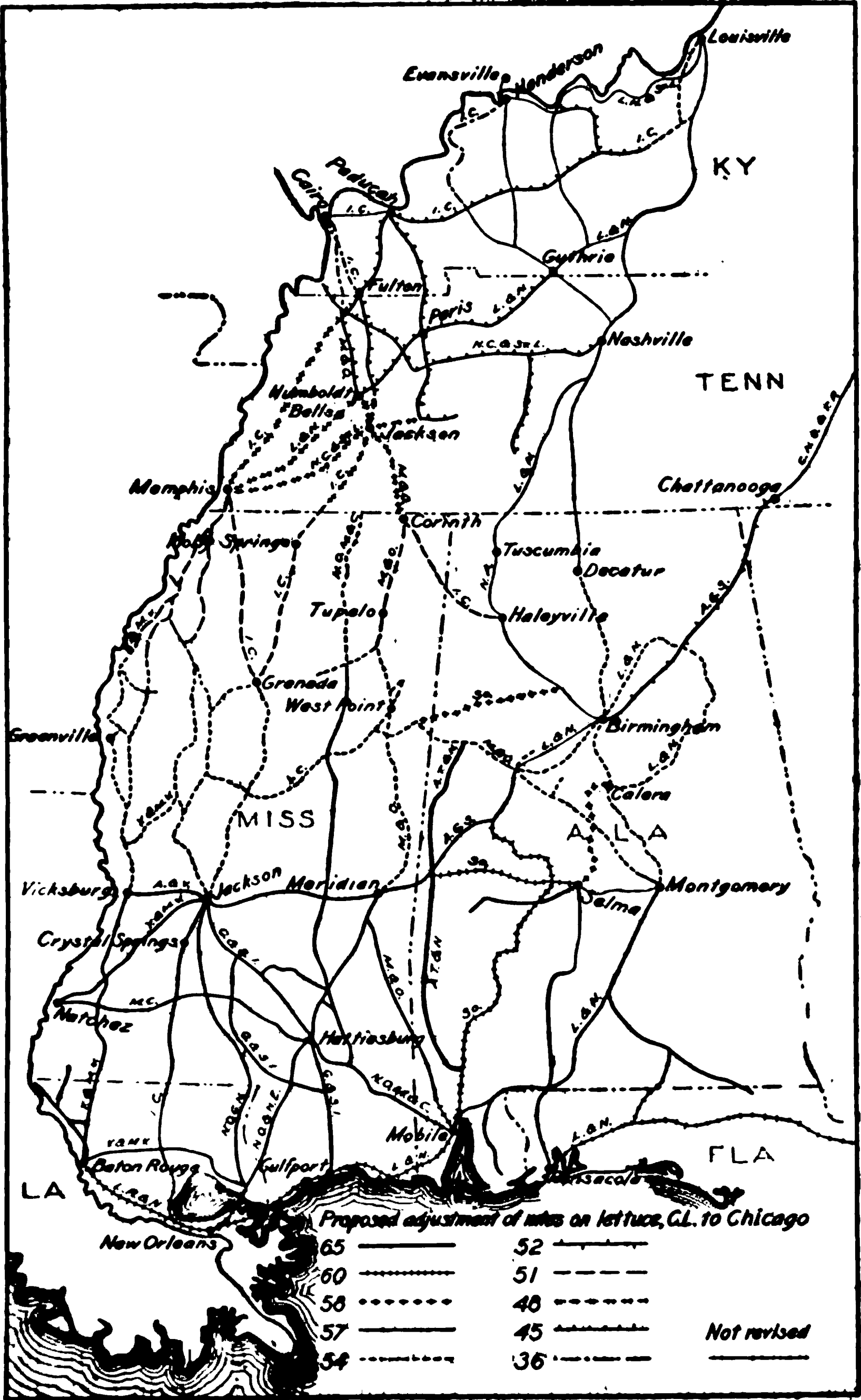
The readjustment involves a uniform arrangement of the different kinds of fruits and vegetables into the following classes or groups: 1. Asparagus, celery, lettuce and other light loading vegetables of the higher class. 2. Beans, cauliflower, peas, and tomatoes. 3. Root vegetables and certain others of a somewhat similar nature such as beets, carrots, onions with tops, cucumbers, and corn. 4. Cabbage, onions without tops, potatoes, turnips, and watermelons. 5. Cantaloupes and muskmelons. 6. Apples and pears. 7. Berries, cherries, grapes, peaches, damsons, and plums.

The former grouping of these commodities not only failed to give proper recognition to the diverse transportation characteristics of the different varieties, but there was also a lack of uniformity in the grouping from any given point to different destinations and in the groupings observed by each of the originating lines. Thus from New Orleans beans and peas comprised a single group to Chicago. To Cincinnati and St. Louis the group included peas, beans, cauliflower, peaches, pears, and tomatoes, and to Kansas City all of the above-

named commodities except peas. Many other examples of such inconsistencies are cited in the record. However, the principle of grouping under a common rate all fruits or vegetables of a particular class is not uniformly observed in the suspended schedules, as, for example, where the through rate is fixed by the aggregate of the intermediate rates or where peculiar competitive conditions control the rate on a particular fruit or vegetable from a certain point without affecting similarly other fruits or vegetables in the same group. The relationship of rates on one commodity to another which results from the regrouping of commodities is not complained of, and manifestly it reflects much more closely than do the former groupings the characteristics of the various fruits and vegetables as related to transportation considerations, such as value, perishability, and loading possibilities.

The revision also involves a regrouping of originating points and the division of the east side territory into zones from each of which a common rate applies, thus placing upon substantially the same basis all rates upon like commodities from similarly situated competing points. The section immediately bordering the Gulf of Mexico, herein called group 1, includes principally points on the Illinois Central system lines from Baton Rouge to New Orleans, inclusive, and points on the Louisville & Nashville Railroad from New Orleans to Mobile and from the first station east of Pensacola to River Junction, Fla. Another zone, herein called group 2, embraces territory to the north of group 1 and includes principally points on the Yazoo & Mississippi Valley, the Illinois Central, the Mobile & Ohio, the New Orleans & Northeastern, and the Louisville & Nashville south of Vicksburg, Jackson, Meridian, Selma, and Montgomery. Additional zones lie still farther to the north, occupying the territory to the Ohio River. The approximate boundaries of the different zones are shown in the accompanying map, which illustrates the grouping of originating points with respect to rates on lettuce to Chicago. Blanket rates on other commodities and to other destinations apply from substantially the same groups.

It is asserted that the readjustment eliminates all of the former fourth section deviations, excepting a few as to which relief is sought, and that it brings the rates from interior points into a proper relationship to those from New Orleans and Mobile. Many of the former rates from New Orleans and Mobile were lower than those from intermediate points, but under the present adjustment they are in most instances higher. That the revision also eliminated numerous inconsistencies in respect of rates to northern and eastern markets is illustrated in the table on page 298.



Commodity.	From—	To—	Former rates.	Present rates.
Berries, C. L.....	{ Group No. 2..... Hammond, La..... Independence, La.....	Cleveland, Ohio.....	86.5	82.6
		Detroit, Mich.....	80.0	82.6
		Toledo, Ohio.....	71.0	82.6
		Buffalo, N. Y.....	78.0	84.6
Tomatoes, C. L.....	{ Group No. 2..... Crystal Springs, Miss..... Haselhurst, Miss.....	Fort Wayne, Ind.....	69.0	82.5
		South Bend, Ind.....	57.0	62.5
		Grand Rapids, Mich.....	59.0	65.1
		Detroit, Mich.....	53.0	65.1
		Fort Wayne, Ind.....	59.0	63.5
		Dayton, Ohio.....	57.0	63.6
Lettuce, C. L.....	{ Group No. 2..... Ponchatoula, La.....	South Bend, Ind.....	55.0	63.5
		Springfield, Ohio.....	53.0	64.6
		Grand Rapids, Mich.....	59.0	65.1
		Columbus, Ohio.....	59.5	65.1
		Buffalo, N. Y.....	53.0	63.5
Beans, C. L.....	{ Group No. 2..... Crystal Springs, Miss.....	Dayton, Ohio.....	57.0	82.6
		Buffalo, N. Y.....	53.0	67.6

Before entering upon a closer examination of the changes in specific rates and regulations, a general contention of the carriers which occupies much of the record will be noticed. Here, as in the *Texas Case, supra*, and earlier in *New Orleans Shippers' Asso. v. I. C. R. R. Co.*, 34 I. C. C., 32, great stress is laid upon the expensive nature of the fruit and vegetable transportation service. In the former case we said:

In general, it is the contention of the carriers that their present rates are too low and that the fruit and vegetable traffic is a particularly expensive one to handle. It is a seasonal traffic, heavy while it lasts, and one which because of the perishable nature of the commodities involved must be handled expeditiously. It is necessary that the carriers make preliminary estimates of the prospective crop to determine the number of cars which will be required to move the traffic. A large part of the equipment must be brought from the north empty and held on sidetracks until needed. Should the estimate of the crop prove oversanguine, many of those cars will not be used; but should the crop mature more rapidly than was expected or exceed such estimate, the carriers must make extraordinary efforts to secure additional cars. Failing to furnish an adequate car supply, they will be confronted with damage claims. The greater part of the movement is in refrigerator cars, which not only hold less than the ordinary box cars, but, excluding 5,000 pounds of ice, weigh approximately 5 tons more. The weight of this ice is not included in the revenue-producing load. Reconsignment also adds materially to the expense of handling fruits and vegetables. It is the practice of the shippers to start a car before it has been sold, and later to reassign it to the most favorable market. As a result, most cars are reconsigned at least once, and many two and three times.

These statements could be greatly amplified from the present record. The high cost of transportation under refrigeration is especially emphasized. Practically the entire movement of fruits and vegetables from this territory is in refrigerator cars, and, excepting potatoes and watermelons, they usually move under refrigeration. It is shown that the cost of refrigerator cars of the latest type in use on the Illinois Central lines is about \$1,600, as against \$1,040 for a box car of similar size. The annual maintenance costs are

about \$120 and \$94, respectively, the average life of a refrigerator car being about 10 years and that of a box car about 18 years. Much of the space in refrigerator cars is occupied by ice boxes and insulation. Their weight largely exceeds that of ordinary box cars of the same size, and the weight of the revenue-producing load is much less in proportion to the gross weight of the car and contents than that of ordinary freight moving in box cars. It is estimated that fruits and vegetables are loaded to about 83 per cent of the car capacity and that the tare weight of the cars in which they are moved averages about 83 per cent of the gross weight, as against 43 per cent in the case of ordinary freight.

The average cost of scrubbing and disinfecting refrigerator cars is \$1.20 per car per trip. False floors, costing from \$6 to \$8 per car, are frequently furnished by carriers for shipments in hampers and only about half of them are recovered. During the fruit and vegetable shipping season about 47 per cent of the total mileage of refrigerator cars used in that service is empty, and throughout the remainder of the year much of this equipment is idle, as it can not be used economically in the transportation of general traffic. In the principal shipping season special fast trains are operated, those from Louisiana making third morning delivery in Chicago, for example, instead of the fourth morning delivery usually accorded to other perishable freight. In order to maintain this schedule the tonnage must be reduced substantially below that of the ordinary train. Special facilities are provided at the principal loading points and terminals to meet the peculiar requirements of the fruit and vegetable traffic, and the carriers incur additional expense for the handling of packages from cars, for extra switching to and from icing stations, and for other special services such as the assembling of empty cars at convenient points prior to the beginning of the shipping season. Protestants show that there is also a large empty movement of tank cars, coal cars, and stock cars as well as of refrigerator cars, and that cars used for loading grain are assembled and held pending the movement of the crops. It is apparent, however, that the fruit and vegetable traffic requires more in the way of special services, equipment, and facilities than does ordinary traffic, thereby materially increasing the difficulties and the costs of transportation.

Protestants contend that the extra switching service necessary in icing cars is covered by the refrigeration charge and should not operate to increase the freight charges. The Illinois Central and the Louisville & Nashville own most of the refrigerator equipment which they use in the fruit and vegetable traffic, but other respondents depend upon leasing or interchange arrangements for their supply. The statement that when private car line refrigerator cars are used

the entire charge for refrigeration accrues to the owner of the cars was submitted to negative protestant's contention that the expense of extra switching is covered by the refrigeration charge.

CARLOAD RATES.

The testimony concerning east side rates, and the protests against the increased rates, relate principally to the carload rates from groups 1 and 2, which, as stated, embrace the southern portions of Louisiana, Mississippi, and Alabama and the western portion of Florida. These are the principal producing sections, the heaviest movements, consisting of cabbage, tomatoes, potatoes, beans, peas, carrots, beets, lettuce, and cucumbers, being from the New Orleans, the Mobile, and the Crystal Springs districts. It is said that 95 per cent of the vegetables produced in the state of Mississippi are grown within a radius of 15 miles of Crystal Springs, a group 2 point situated on the Illinois Central, and that out of 3,642 cars of fruits and vegetables shipped in 1915 from points on the southern lines of the Illinois Central system, 2,836 cars moved from group 2. Protestants representing the Crystal Springs interests attack the increased rates from that point to the destination territory as a whole. The complaint of other protestants is limited largely to the rates from groups 1 and 2 to points on and west of the Mississippi River.

The rates of the Illinois Central and of the Louisville & Nashville, which are the principal fruit and vegetable carrying roads, will be taken as representative of the rates of all the lines serving the east side territory. A comparison of the present and the former carload rates on one or more of the principal moving commodities representative of each class from New Orleans and from Illinois Central group 2 to representative markets in the north with rates on the same commodities between other points is shown in the following table:

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Comparison of the present rates from New Orleans and from group 2 to various destinations with the former rates and with the current rates from other points for similar distances.

From--	To--	Distance (miles).	Potatoes.		Cabbage.		Beets.		Lettuce.		Tomatoes.		Berries.		Cantaloupes.		Apples.		Water-melons.	
			For-mer rates.	Pre-sent rates.	For-mer rates.	Pre-sent rates.	For-mer rates.	Pre-sent rates.	For-mer rates.	Pre-sent rates.	For-mer rates.	Pre-sent rates.	For-mer rates.	Pre-sent rates.	For-mer rates.	Pre-sent rates.	For-mer rates.	Pre-sent rates.	For-mer rates.	Pre-sent rates.
New Orleans.....	Memphis.....	396	25	30	25	30	30	30	42	42	50	41	130	50	25	35	25	42	25	30
Do.....	Kansas City.....	867	43	52	46	52	55	55	60	65	60	63	90	89	50	57	58.5	65	43	52
Do.....	St. Louis.....	996	35	40	38	40	42.5	46	49	53	67.5	51	76.5	62	40	45	42.3	58	35	40
Do.....	Minneapolis.....	1,241	49	56	52	56	63.5	62	70	72	78	61	112.5	99	58	61	63.3	72	46	56
Do.....	Chicago.....	1,241	40	47	44	47	49.5	53	60	60	76.5	58	90	71	45	52	52	60	40	47
Do.....	Cincinnati.....	835	38	44	41	44	46.5	50	52	56	72	55	81	68	42	49	46.8	56	38	44
Do.....	Detroit.....	1,106	45	49.5	49	54	61.2	62	103.5	69	62	67	108.5	86.6	53	59	61.2	66	45	54
Do.....	Buffalo.....	1,261	45	53.7	49	56	64	62	58	69	58	67	81	90	53	61	58	68.9	50	56
Do.....	Pittsburgh.....	1,148	45	53.7	49	56	64	62	58	69	58	67	81	88.3	51.5	61	58	68	50	56
Do.....	New York.....	1,344	40	50	30	67	86	68	86	75	86	75	85	134.2	50	79.4	86	75	50	74.4
Group 2.....	Memphis.....	289	25	28	30	28	35	34	35	39	35	38	44	46	21	32	35	39	21	28
Do.....	Kansas City.....	761	45	50	50	50	50	56	55	62	55	60	86	85	48	55	55	62	43	50
Do.....	St. Louis.....	592	32	38	36	38	36	44	54	50	44	48	58	58	28	42	44	50	28	38
Do.....	Minneapolis.....	1,168	50	54	54	54	57	60	65	69	62	65	95	95	53	59	65	69	50	54
Do.....	Chicago.....	1,808	40	45	44	45	47	51	55	57	52	55	61	67	40	50	52	57	40	45
Do.....	Cincinnati.....	729	35	42	39	42	39	43	47	53	47	52	61	64	31	47	47	53	31	42
Do.....	Detroit.....	1,000	45	47.5	49	52	49	51.1	53	56.1	53	65.1	80	82.6	49	57	53	63	45	52
Do.....	Buffalo.....	1,173	45	51.7	49	54.9	49	62	53	68.5	58	67	78	86	49	59	53	65.9	45	54.9
Do.....	Pittsburgh.....	1,042	45	51.7	49	54	49	62	53	67.3	53	66.8	78	84.3	46.5	59	53	65	45	54
Do.....	New York.....	1,266	59	65.3	63	67	68	68	76	75	76	75	124	130.2	64	77.4	71	75	64	72.4
Albany, Ga.....	Chicago.....	898	53	53	63	63	63	83	83	83	83	83	83	83	83	83	83	83	83	83
Jacksonville, Fla.....	do.....	1,107	51	51	61	61	61	81	81	81	81	81	81	81	81	81	81	81	81	81
Ocala, Fla.....	Baltimore.....	895	48.5	48.5	73.5	73.5	98	98	98	98	98	98	250	250	98	98	98	98	98	98
Ybor City, Fla.....	Richmond.....	917	51.5	51.5	71.5	71.5	97	97	97	97	97	97	97	97	97	97	97	97	97	97
Tampa, Fla.....	do.....	851	52.5	52.5	73.5	73.5	97	97	97	97	97	97	97	97	97	97	97	97	97	97
Stark, Fla.....	Boston.....	1,259	61.5	61.5	83	83	104	104	104	104	104	104	250	250	104	104	104	104	104	104
Terra Ceia, Fla.....	Philadelphia.....	1,128	59	59	91.5	91.5	104	104	104	104	104	104	250	250	104	104	104	104	104	104
Tampa, Fla.....	Washington.....	967	52.5	52.5	80.5	80.5	65	65	65	65	65	65	94	94	65	65	65	65	65	65
Tyler, Tex.....	Chicago.....	902	52	52	57	57	65	65	65	65	65	65	94	94	65	65	65	65	65	65
Jacksonville, Tex.....	do.....	920	52	52	57	57	65	65	65	65	65	65	94	94	65	65	65	65	65	65
Charleston, S. C.....	New York.....	739	29.5	29.5	46	46	71	71	60	60	60	60	35	35	28	28	35	35	28	28
Do.....	Baltimore.....	551	28	28	43.5	43.5	67	67	54	54	54	54	32	32	32	32	32	32	32	32
Do.....	Philadelphia.....	648	29.5	29.5	46	46	71	71	60	60	60	60	32	32	32	32	32	32	32	32
Do.....	Boston.....	977	42	42	63	63	109	109	80	80	80	80	44	44	44	44	44	44	44	44
Texas common points.....	Chicago.....	1,100	52	52	57	57	63	63	65	65	65	65	94	94	65	65	65	65	65	65

¹ In bulk.
² In crates.

³ From July 1 to Dec. 31 of each year, 47 cents per 100 pounds.

⁴ Applies to Jersey City only.

⁵ Average.

In the present adjustment the rates from New Orleans are regarded as the basic rates, those from the interior groups being adjusted with relation thereto. The weighted average haul from group 2 points is about 100 miles less than the distance from New Orleans, and except to Buffalo-Pittsburgh and Atlantic seaboard territories the present rates are uniformly less. To these latter territories the rates from group 2 in many instances equal or exceed those from New Orleans. As shown in the above table, the rate on potatoes from group 2 to New York is higher than the rate from New Orleans. From New Orleans the rate on potatoes is less to New York than to Buffalo and Pittsburgh. This is also true of the rate on onions without tops. Similar departures from the long-and-short-haul rule of the fourth section existed in the former adjustment and are protected by appropriate applications for relief which were not set for hearing in this proceeding. It is not shown that the present adjustment increases the discrimination against intermediate points.

Rates on potatoes and cabbage are of especial interest and importance, as these commodities are staple articles of food which move in large volume. To all of the above-named destinations the present rates are the same on cabbage and potatoes, except to the more eastern points. The former rates on cabbage were from 3 cents to 5 cents higher than the rates on potatoes. Under the current Texas adjustment the difference is 5 cents and in rates from the southeast it ranges from 10 cents to 38 cents. Potatoes are shipped from groups 1 and 2 in ventilated cars or in uniced refrigerator cars. They move from Texas largely in stock cars, which explains the differential under cabbage, a commodity which moves from Texas as well as from east side territory in refrigerator cars and under refrigeration.

The record shows that there is a movement of potatoes from the vicinity of Jacksonville and Tyler, Tex., and Eagle Lake in southern Texas is said by the west side respondents to be a representative potato shipping point. These cities are in Texas common-point territory, from which a blanket rate applies, the average distance to Chicago being approximately 1,100 miles. For this distance the ton-mile earnings on potatoes from Texas common points to Chicago are 9.4 mills. The increased rates from New Orleans and from group 2 yield 10.8 mills and 11.2 mills per ton-mile, respectively. The former rates yielded 8.7 mills per ton-mile from New Orleans and 9.9 mills per ton-mile from group 2 to Chicago, the distances being 912 and 806 miles, respectively. The carload minimum on potatoes from the Florida points named in the above statement is 30,000 pounds and that from the Texas points is 24,000 pounds. The present minimum from New Orleans and from group 2 during the

months of March, April, May, and June is 24,000 pounds, and during the other months 30,000 pounds.

Tomatoes move in large quantities from the Crystal Springs district and are shipped to destinations throughout the northern part of the United States, but it appears that 75 per cent or more of the shipments are destined to Pittsburgh, Buffalo, Cleveland, Detroit, and Atlantic seaboard territory. They are shipped in refrigerator cars, but not always under refrigeration. All of the other vegetables and fruits move regularly under refrigeration.

Respondents submitted many exhibits designed to prove that, notwithstanding the exceptional expense of transportation in refrigerator cars and under refrigeration, the earnings per car and per car-mile under the increased rates would not be higher than on similar commodities moving under current rates from other territories or on unlike commodities which do not receive special service. Such comparisons of the rates from New Orleans and group 2 to Chicago, shown in the following table, are representative of numerous others of record:

Comparison of earnings under the increased rates on commodities transported under refrigeration with earnings on other commodities.

To Chicago, Ill., from—	Commodity.	Revenue weight.	Percent revenue weight is of total weight.	Rate.	Revenue per car.	Distance.	Car-mile earnings.
				Cents.		Miles.	Cents.
New Orleans.....	Berries.....	17,000	34.6	71	\$120.70	912	13.12
	Beans.....	20,000	37.3	58	116.00	912	12.71
	Cabbage.....	23,000	30.7	47	108.30	912	11.86
	Carrots.....	17,000	37.3	53	108.00	912	11.68
	Tomatoes.....	17,000	30.7	56	127.00	912	13.90
Group 2.....	Potatoes.....	17,000	35.3	47	112.90	912	12.37
	Berries.....	17,000	34.6	67	113.90	806	14.13
	Beans.....	17,000	37.3	55	110.00	806	13.66
	Cabbage.....	17,000	30.7	45	108.60	806	12.84
	Carrots.....	17,000	37.3	51	103.00	806	12.06
Jacksonville, Tex.....	Tomatoes.....	17,000	30.7	55	121.00	806	15.01
	Potatoes.....	17,000	35.3	45	106.00	806	13.60
	Berries.....	17,000	34.6	94	140.90	920	17.37
	Beans.....	17,000	37.3	84	130.00	920	14.13
	Cabbage.....	17,000	31.6	57	130.90	920	14.57
Jacksonville, Fla.....	Carrots.....	17,000	37.3	84	130.00	920	14.13
	Tomatoes.....	17,000	30.7	85	143.00	920	15.54
	Beans.....	17,000	37.3	81	140.00	1,107	14.63
	Cabbage.....	17,000	31.6	61	146.40	1,107	13.29
	Carrots.....	17,000	37.3	51	142.00	1,107	14.68
Jackson, Miss.....	Tomatoes.....	17,000	30.7	51	178.20	1,107	16.00
	Cottonseed oil.....	17,000	66.3	27	202.90	738	27.92
	McComb, Miss.....	17,000	63.1	27	135.00	806	16.75
	Do.....	17,000	63.3	40	200.00	806	20.75
	Hammond, La.....	17,000	59.1	24.5	122.50	850	14.30
Jackson, Miss.....	Lumber.....	17,000	63.6	17.5	70.00	738	6.00
	Cottonseed products.....	17,000	63.3	25	147.00	912	16.11
	New Orleans, La.....	17,000	66.5	20	148.00	922	15.90
Do.....	Clean rice.....	17,000	66.5	20	148.00	922	15.90
	Molasses.....	17,000	66.5	20	148.00	922	15.90

¹ Carload minimum.

² Average loading.

Chicago is the principal market for vegetables shipped from groups 1 and 2. More than one-third of the carload shipments and **22.1 C. C.**

practically all of the less-than-carload shipments originating on the southern lines of the Illinois Central system in 1915 were destined to Chicago. If the increased rates had been applied on the carload shipments the revenue would have been \$9,858.58 greater, an average of \$6.90 per car. Upon the basis of the average distance from Texas common points to Chicago of approximately 1,100 miles, the car-mile earnings to Chicago would be 14.58 cents on berries, 11.81 cents on beans, 12.44 cents on cabbage, 11.81 cents on carrots, and 13 cents on tomatoes. These earnings are about 17 per cent less than those shown in the statement as earnings on shipments from Jacksonville, Tex.

Comparisons of the present rates and the earnings per car-mile from New Orleans to New York and Philadelphia, with the current rates on traffic moving under refrigeration from other producing sections, are shown in the following table:

Comparison of the present rates from New Orleans to New York and Philadelphia with current rates from other points.

From—	To—	Distance.	Beets.		Cabbage.		Lettuce.		Potatoes.		Onions without tops.		Cucumbers.	
			Rate.	Per car-mile.	Rate.	Per car-mile.	Rate.	Per car-mile.	Rate.	Per car-mile.	Rate.	Per car-mile.	Rate.	Per car-mile.
New Orleans	New York ..	Miles. 1,344	Cts. 68	10.1	Cts. 67	9.9	Cts. 75	11.1	Cts. 50	10.8	Cts. 50	8.9	Cts. 68	10.1
Do.....	Philadelphia	1,254	66	10.5	65	10.3	73	11.6	50	11.5	50	9.5	66	10.5
Jacksonville, Fla. ¹	New York ..	981	78	13.9	60	14.7	78	13.9	37.5	11.5	78	12.9	78	12.9
Do.....	Philadelphia	890	74	14.6	58	15.6	74	14.6	37.5	12.6	74	14.6	74	14.6
Savannah...	New York ..	850	78	16.1	54	15.2	78	16.1	36	12.7	78	16.1	78	16.1
Do.....	Philadelphia	780	74	17.1	54	17.1	74	17.1	36	14.2	74	17.1	74	17.1
Charleston..	New York ..	735	60	16.3	46	15	60	16.3	29.5	12	60	16.3	60	16.3
Do.....	Philadelphia	644	60	18.6	46	17.1	60	18.6	29.5	13.7	60	18.6	60	18.6
Fort Worth..	New York ..	1,750	101.1	11.6	88.5	11.9	101.1	10.7	81.5	11.2	94.5	12	101.1	12.9
Do.....	Philadelphia	1,659	99.1	12	84.5	12.2	99.1	11.1	79.5	11.5	92.5	14	99.1	13.3

¹ When from beyond.

The earnings per car-mile stated in the above table are based upon the minimum carload. It is shown by comparisons of the average earnings per ton-mile and per car-mile yielded by the present rates on potatoes, cabbage, lettuce, onions, and other vegetables from New Orleans to seven destinations in eastern trunk line territory, including such points as Boston, New York, and Philadelphia, with the average earnings yielded by the current rates from representative points in Florida, Georgia, South Carolina, and Texas to the same destinations that the earnings under the present rates would be almost without exception lower than those yielded by the rates from the other points named.

Numerous exhibits were introduced by the Louisville & Nashville comparing the increased rates from New Orleans to Ohio River crossings and destinations in central freight association territory with the rates from points in Florida, southern Georgia and Alabama. The general effect of these comparisons is illustrated in the following statement:

Comparison of the present rates from New Orleans to Louisville and Columbus with current rates from Georgia, Alabama, and Florida points.

[Rates in cents per 100 pounds.]

From—	To—	Dis- tance (miles).	Beets, car- rots, cucum- bers.	Beans, toma- toes.	Let- tuce.	Cab- bage.	Pota- toes.
New Orleans.....	Louisville, Ky.....	747	46	51	53	40	38
Do.....	Columbus, Ohio.....	952	62	67	69	54	49.5
Thomasville, Ga.....	Cincinnati, Ohio.....	733	66	66	66	48	38
Valdosta, Ga.....	Calro, Ill.....	672	66	66	66	48	38
Macon, Ga.....	East St. Louis, Ill.....	693	56.5	56.5	56.5	48.5	38.5
Jacksonville, Fla.....	Memphis, Tenn.....	683	60	60	60	42	32
Dothan, Ala.....	Indianapolis, Ind.....	720	79.1	79.1	79.1	58	48
Thomasville, Ga.....	Columbus, Ohio.....	849	79.2	79.2	82.4	58	48
Valdosta, Ga.....	Peoria, Ill.....	934	83	83	83	63	53
Macon, Ga.....	Milwaukee, Wis.....	906	70	70	70	59	44
Jacksonville, Fla.....	Indianapolis, Ind.....	911	77.1	77.1	77.1	56	46

The local rates from Jacksonville, Fla., named in the above statement are 4 cents higher than the proportional rates applying on shipments from beyond. Respondents urge that comparisons of the increased rates with the rates from Georgia, Alabama, and Florida are especially significant because a large portion of the haul on traffic from that territory is over lines which also participate in the fruit and vegetable traffic from groups 1 and 2.

The principal movement of watermelons from groups 1 and 2 is from the Pensacola and Atlantic division, extending east from Pensacola, Fla., and the Alabama and Florida division in southeastern Alabama, of the Louisville & Nashville Railroad. The rates on watermelons from the Alabama and Florida division are increased 5 cents to Chicago, 4 cents to Louisville, 4 cents to Omaha, 2 cents to Cincinnati, and increases similar in amount are made to points in central freight association territory. The increased rates are said to be on a parity with the current rates from opposite stations on the Atlantic Coast Line Railroad and from the Georgia producing district in general. Watermelons do not move under refrigeration, but the record does not definitely indicate the kind of cars usually employed in their transportation from east side territory. From southeastern territory they are shipped in bulk in ventilated cars.

In *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.*, 24 I. C. C., 560, rates on watermelons and cantaloupes from Florida and Georgia points to eastern destinations were attacked and were not found to be unreasonable. Following is a comparison of the rates involved in that case with the present rates from Lakewood, Fla., a point from which the distances are approximately the same as the average distances from stations on the two divisions named:

From—	To—	Dis- tance.	Watermelons.			Cantaloupes.		
			Former rate.	Present rate.	Ton- mile earn- ings.	Former rate.	Present rate.	Ton- mile earn- ings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>
Lakewood, Fla.....	St. Louis.....	771	35	35	9.08	43.8	45	11.7
Do.....	Chicago.....	882	40	45	10.20	47.5	50	11.8
Do.....	Detroit.....	1,009	43.5	44.9	8.89	50	56.9	11.3
Do.....	Pittsburgh.....	1,050	43.5	44	8.38	50.5	56	10.6
Jacksonville, Fla. ¹	Jersey City.....	981	.....	² 42	8.56	.....	³ 46	9.3
Trilby, Fla. ¹	do.....	1,162	.....	49.9	8.59	.....	64	11.02
Macon, Ga. ¹	New York.....	928	.....	38	8.19	.....	⁴ 43.75	10.51
Charleston, S. C. ¹	do.....	739	.....	34	9.20	.....	⁴ 43.75	11.84

¹ Rates considered in *Bahrenburg, Bro. & Co. v. A. C. L. R. R. Co.*, *supra*.

² Proportional rates.

³ In ventilated box cars, 42 cents.

⁴ In ventilated box cars, 44.5 cents.

In ventilated box cars, 35 cents.

The former carload minimum on watermelons and cantaloupes from east side territory was 20,000 pounds, and the present minimum is 24,000 pounds. A carload minimum of 24,000 pounds applies in connection with the rates involved in the case cited. The earnings per car-mile under the former rates and carload minimum for the average distance from all points on the Alabama and Florida division of the Louisville & Nashville to Chicago, a destination taking relatively high present rates, are approximately 9.3 cents on watermelons and 10.8 cents on cantaloupes. Under the present rates and carload minima the car-mile earnings are 12.6 cents on watermelons and 13.9 cents on cantaloupes. From these and other comparisons of record it appears that the increased rates from points on the Louisville & Nashville are but little, if any, higher than the rates involved in the case cited.

While, as a general rule, the present rates on other lines serving groups 1 and 2 are the same as those of the Illinois Central and the Louisville & Nashville from related points, the present rates from stations in southern Alabama on the Southern Railway and the Alabama, Tennessee & Northern Railway are higher than those from opposite stations on other lines. Respondents explain that this situation results from the fact that these carriers do not publish joint rates to points north of the Ohio River, through rates to such points

being made on the Ohio River combination. It appears, however, that to Ohio River crossings, Cairo, Ill., for example, the rates from stations on the Alabama, Tennessee & Northern Railway are higher than from opposite stations on the Southern Railway, the Mobile & Ohio, and the Louisville & Nashville, and are also higher than those from Mobile, a more distant point. The propriety of such an adjustment is not satisfactorily established by the facts of record.

In the interior territory lying north of group 2 the production of fruits and vegetables consists chiefly of cabbage, potatoes, tomatoes, beans, onions, and berries. The present and the former rates to representative destinations and their relation to the rates from New Orleans and group 2 are indicated in the following tables.

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Present and former rates and approximate distances from interior groups to representative destinations compared with those from New Orleans and group 2.

TO LOUISVILLE.

	Distance (miles).	Beans.		Berries.		Cabbage.		Cantaloupes.		Potatoes.		Tomatoes.		Watermelons.	
		Former rates.	Present rates.	Former rates.	Present rates.	Former rates.	Present rates.	Former rates.	Present rates.	Former rates.	Present rates.	Former rates.	Present rates.	Former rates.	Present rates.
New Orleans.....	749	67.5	51	76.5	62	38	40	45	40	35	40	67.5	51	35	40
Group 2 (I. C.).....	643	44	48	53	58	36	38	42	28	32	38	44	48	28	38
Between Montgomery and Decatur, Ala. (L. & N.)	399	46.5	46	54	56	26	36	40	28	23	32	31.5	46	23	28
West Point, Miss. (M. & O.).....	467	45	45	72	54	35	35	39	37	32	35	44	45	22.5	30
Tupelo, Miss. (M. & O.).....	420	45	41	56.5	50	32	32	35	34	30	32	35.1	41	30	30
Henderson, Tenn. (M. & O.).....	330	45	37	55	46	29	28	31	31	27	28	32.4	37	27	28
Group 5, Tenn. (I. C.).....	307	40	37	44	46	26	28	23	23	23	28	30	37	23	28
Group 8, Tenn. (I. C.).....	341	42	37	42	46	25	28	21	21	21	28	33	37	21	28
South of Bells, Tenn. (L. & N.).....	341	38.7	37	39	46	23	28	26	26	21	28	29.7	37	21	28
North of Bells, Tenn. (L. & N.).....	247	38.7	33	39	42	23	24	26	26	21	24	29.7	33	21	24
Humboldt, Tenn. (M. & O.).....	296	38.7	33	39	42	23	24	26	26	21	24	29.7	33	21	24
Group 6, Tenn. (I. C.).....	292	38	33	39	42	28	24	26	21	21	24	29.5	33	21	24

TO COLUMBUS, OHIO.

New Orleans.....	952	78.3	67	87.3	86.6	45	54	59	46	40	49.5	78.3	67	40	54
Group 2 (I. C.).....	845	59.5	65.1	78.5	82.6	48.5	52	56.7	44.5	43	47.5	53	65.1	43	52
Between Calera and Decatur, Ala. (L. & N.).....	597	64.3	58.1	79.5	80.5	38	46	49	41	33	42	45.9	58.1	33	38
West Point, Miss. (M. & O.).....	676	61.5	60	85.5	77.6	45	48	53.7	46	40	45.5	58.5	60	34	44
Tupelo, Miss. (M. & O.).....	649	61.5	55	71.5	71.6	42	44	49.7	43	38	43.5	46.8	55	38	44
Henderson, Tenn. (M. & O.).....	559	61.5	50	69.5	65.6	39	42.7	45.7	40	35	40.5	44.1	50	35	44
Group 5, Tenn. (I. C.).....	542	59.5	50	67.5	65.6	38	40	45.7	38	33	40	42	50	33	42.7
Group 8, Tenn. (I. C.).....	571	56	50	67.5	65.6	36	40	45.7	35.5	32	40	42.5	50	32	42.7
South of Bells, Tenn. (L. & N.).....	563	56.2	50	56.5	65.6	35	40	45.7	39	31	40	42.3	50	31	42.7
North of Bells, Tenn. (L. & N.).....	477	56.2	43.5	56.5	59.5	35	35	41.7	39	31	35	42.3	43.5	31	39.7
Humboldt, Tenn. (M. & O.).....	525	60.3	43.5	56.5	59.5	34	35	41.7	36	30	35	39.6	43.5	30	39.7
Group 6, Tenn. (I. C.).....	526	56	43.5	64.5	59.5	34	36	41.7	35.5	30	35	39.5	43.5	30	39.7

TO PITTSBURGH, PA.

.....	148	58	67.3	67	81	83.3	49	60	54.5	61	45	53.7	58	67	50	58
.....	1,042	58	67.3	67	75	84.3	49	54	48.5	59	45	51.7	53	64.3	45	54
.....	1,793	58	67.3	67	84	81.3	42.4	48	48	51	39.4	44	50.4	60.3	40	49
.....	800	63	67.3	62.3	83.6	80.3	46	52	48	56	41	49.7	59	62.3	38	45
.....	844	63	67.3	60.3	76.5	76.3	46	50	48	53	40	47.7	52.3	60.3	40	46
.....	756	63	67.3	67.3	76.5	72.3	46	48	48	49	40	44.7	52.3	67.3	40	46
.....	737	63	67.3	67.3	65	72.3	44	48	48.5	49	40	44.7	50.5	67.3	40	46
.....	766	63	67.3	67.3	65	72.3	41	48	48.5	49	37.5	44.7	51	67.3	37.5	46
.....	757	63	67.3	67.3	69	72.3	39.4	45	44	49	37.4	44.7	48.5	67.3	39	45
.....	672	63	67.3	67.3	69	68.3	39.4	43	44	44.9	37.4	41.7	48.5	64.3	39	43
.....	720	63	67.3	64.3	69	68.3	45	42	48	44.9	40	41.7	48.5	64.3	40	43
.....	753	63	67.3	64.3	69	68.3	39.5	43	37.5	44.9	37.5	41.7	48.5	64.3	37.5	43

TO KANSAS CITY, MO.

.....	867	60	66	63	89	89	46	53	50	57	43	53	60	63	43	53
.....	761	60	66	63	85	85	46	50	48	56	43	50	56	60	43	50
.....	752	60	66	63	85	83	46	50	50	53	43	47	50	58	30	48
.....	636	60	66	63	89	83	46	47	50	49	43	44	50	56	43	48
.....	569	60	66	63	91.7	81	45	44	47	45	40	41	49.5	53	40	41
.....	565	60	66	63	89.9	79	43	41	40	45	38	41	47	53	38	41
.....	560	60	66	63	79	79	40	41	39	46	38	41	45.9	53	35	41
.....	530	60	66	63	77	79	37	41	34	45	35	41	45.9	53	35	41
.....	570	60	66	63	74	75	37	37	30	41	35	37	45.9	50	35	37
.....	617	60	66	63	74	75	37	37	43	41	35	37	45.9	50	35	37
.....	569	60	66	63	82.7	76	37	37	38	41	35	37	45.9	50	35	37
.....	480	60	66	63	74	75	37	37	38	41	35	37	45.9	50	35	37

It will be noted that the increases from this territory are more general and that usually they are larger in amount than those from New Orleans. The rate on cabbage, for example, from New Orleans to Louisville is increased only 2 cents, while from stations on the Louisville & Nashville between Montgomery and Decatur it is increased 10 cents. The rate on potatoes from New Orleans to Louisville is increased 5 cents and from the group of stations named 9 cents. The average earnings under the increased rates on berries, tomatoes, and beans from Illinois Central groups 5, 6, and 8 to Chicago, for an average haul of 473 miles, are 18.7 cents per car-mile and 19.9 mills per ton-mile. From stations on the Louisville & Nashville Railroad south of Bells, Tenn., the rate on berries is increased from 45 cents to 53 cents. The distance from a representative point on this division to Chicago is approximately 500 miles, and under the present rate and carload minimum the earnings per car-mile are about 18 cents. To points in eastern trunk line territory the earnings per car-mile and per ton-mile under the present rates are somewhat less than to Chicago or to points west of the Mississippi River.

There is a heavy movement of strawberries from stations on the Louisville & Nashville Railroad in northern Alabama and western Tennessee. This is the principal commodity affected by changes in the rates of that line. Under the present adjustment the rates on strawberries as a whole from Alabama are reduced and from Tennessee they are increased. The carload minimum is reduced from 20,000 pounds to 17,000 pounds and the less-than-carload minimum, for which a refrigerator car is furnished, is reduced from 12,000 pounds to 10,000 pounds. These minima are now in effect on the Illinois Central. Assuming that the changed minima will be used to best advantage, it is estimated that under the present rates the reduction in revenue on 185 cars of strawberries shipped in 1916 from Castleberry and Cullman, Ala., would have been \$334.78.

In justification of the increases from the interior groups it is urged that the former rates on the principal moving commodities were extremely low; that the present rates bear a consistent and proper relation to the rates from New Orleans; and that they compare favorably with the rates from other producing territories. The following statement contrasts the present rates to Chicago and the earnings per car-mile based upon the minimum carload from points representative of the interior groups with the rates and per car-mile earnings for similar distances between other points named in respondents' exhibits:

To Chicago, Ill., from—	Approximate distance.	Beans.		Berries.		Cabbage.		Cantaloupes.		Potatoes.		Tomatoes.		Watermelons.	
		Rates per 100 pounds.	Earnings per car-mile.	Rates per 100 pounds.	Earnings per car-mile.	Rates per 100 pounds.	Earnings per car-mile.	Rates per 100 pounds.	Earnings per car-mile.	Rates per 100 pounds.	Earnings per car-mile.	Rates per 100 pounds.	Earnings per car-mile.	Rates per 100 pounds.	Earnings per car-mile.
(L. & N.)	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
.....	557	52	15.9	53	16.3	43	13.1	47	17	43	15.7	53	15.9	43	15.7
.....	501	49	16.7	53	16.7	40	13.5	44	17.9	40	16.2	49	16.7	36.9	16.2
.....	510	48	18	53	17.7	37	14.5	41	19.3	37	17.4	46	18	37	17.4
.....	467	41.9	18	48	17.5	39	14.1	36	18.5	33	18.9	41.9	18	33	18.9
.....	444	53	21.8	78	26.5	45	14.3	53	22.8	40	21.6	53	22.8	40	21.6
.....	507	52	24.5	.....	.....	44	20.8	.....	.....	34	20	53	24.4	23	19.9
.....	480	43	26.8	.....	.....	44	22	.....	.....	.....	.....	.....	.....	20.8	10.4
.....	534	58	18.3	85	22.8	50	18.9	58	21.9	45	17	58	18.3	45	17
.....	587	58	16.5	83	21	50	17.4	58	18.9	45	15.7	58	16.9	45	15.7
.....	518	58	18.8	86	23.5	50	19.5	58	18.8	45	17.5	58	18.8	45	17.5
.....	780	64	17.5	.....	.....	46	15.1	.....	.....	36	14.8	64	17.5	31	10.1
.....	544	.....	.....	82.3	20.5	.....	.....	.....	.....	.....	.....	.....	.....	33.7	12.5
.....	729	80	16.3	.....	.....	46	15	48.75	14.7	28.5	12	80	16.3	34	11.1
.....	854	74	19.5	.....	.....	50	18.1	.....	.....	33	14.9	.....	.....	33	11.5
.....	571	54	18.9	.....	.....	43.5	18.3	.....	.....	28	14.7	.....	.....	29	12.1

¹ From July 1 to Dec. 31 of each year 35 cents per 100 pounds.

² From July 1 to Dec. 31 of each year 40 cents per 100 pounds.

The principal competition of the Crystal Springs protestants comes from the Norfolk district of Virginia and from Texas. Comparisons of the present rates from Crystal Springs with the rates from Texas have already been made. The Norfolk competition appears to be principally on cabbage, the rate on which to Chicago, for example, is 26.5 cents from Norfolk, a distance of 989 miles, as against the proposed rate of 45 cents from Crystal Springs to Chicago, a distance of 761 miles. The circumstances and conditions affecting transportation from Norfolk are not fully disclosed by the record, but it is shown that the bulk of the movement from Norfolk is to eastern cities; that the traffic receives no such special service as does that from the more distant Mississippi Valley districts; and that to the eastern cities the rates are made in competition with boat lines operating from Norfolk to New York, Baltimore, and other ports. It further appears that tomatoes and cabbage, two of the principal products of the Crystal Springs district, are marketed in the eastern cities notwithstanding the competition of the Norfolk and other producing districts. It is stated that 40 per cent of the tomato shipments from Crystal Springs are destined to New York and Philadelphia. The present rate on this commodity from Crystal Springs to New York is 1 cent less than the former rate, and to Philadelphia it is the same as the former rate. Rates from Norfolk are adjusted on the trunk line basis, and the traffic conditions in trunk line territory are well known to be more favorable than those in Mississippi Valley territory. *Bluefield Shippers Asso. v. N. & W. Ry. Co.*, 22 I. C. C., 519.

In support of their contention that the increased rates to points on and west of the Mississippi River are unreasonable protestants rely mainly upon comparisons with the southbound rates on the same commodities and on the fact that in many instances they exceed class rates which would apply in the absence of specific commodity rates. The following statement presents a comparison of the present northbound rates with the rates in the opposite direction on the principal commodities which move southbound:

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Carload rates in cents per 100 pounds between Mobile, Ala., and points shown.

	Onions, cabbage, and turnips.		Potatoes.		Tomatoes.	
	North-bound.	South-bound.	North-bound.	South-bound.	North-bound.	South-bound.
Chicago, Ill.....	47	35	47	35	58	(1)
Davenport, Iowa.....	49	35	49	35	61	(1)
Columbus, Ohio.....	54	35	49.5	35	67	(1)
Minneapolis, Minn.....	56	42.5	55	42.5	68	(1)
Milwaukee, Wis.....	49	37	49	37	62	(1)
Sioux City, Iowa.....	59	42	58	37	71	52
Kansas City, Mo.....	52	37	52	34	68	47
Louisville, Ky.....	40	30	37	30	51	(1)

1 No commodity rate published. Class rate exceeds northbound commodity rate.

Respondents testified that some of the northern vegetables formerly moved southward by water; that when moving by rail they are handled in regular trains and are not accorded special or expedited service; and that the northern and the southern vegetables are dissimilar in carrying and keeping qualities, conditions which tend to justify lower rates southbound than northbound. It appears, however, that there is a considerable movement of potatoes from the north in winter, when the shipments must be protected from freezing by the use of refrigerator cars or heated box cars, and also that the northern potatoes compete with the southern product in certain markets during certain months.

As to the contention that the present rates are unreasonable because they exceed the class rates, respondents say that this situation exists only where the class rates have been depressed by water competition, as from New Orleans, Mobile, and certain Mississippi River points, and, further, that the class rates were not established in contemplation of such special services as are given the fruit and vegetable traffic. It is also stated that many of the rates from the Florida and Charleston producing districts are higher than the class rates. A similar contention was fully considered in *New Orleans Shippers' Asso. v. I. C. R. R. Co., supra*, and need not be further considered here.

Finally, protestants urge that the fruit and vegetable business can not stand additional transportation charges and that the carriers are under obligations to continue the rates under which the industry in southern producing sections has been developed. As to such contentions, we have said in other proceedings that the possible adverse effect upon the prosperity of a business does not justify us in requiring a carrier to maintain rates which are less than reasonable, notwithstanding the fact that they were voluntarily established and have influenced the location of industries. *Ponchatoula Farmers'*

Asso. v. I. C. R. R. Co., 19 I. C. C., 513; *Chattanooga Log Rates*, 35 I. C. C., 163; *So. Pac. Co. v. I. C. C.*, 219 U. S., 433.

Upon a record dealing with so many commodities which differ radically in transportation characteristics, and involving such a broad and complicated readjustment of rates between large territories of origin and destination, it is manifestly impossible to fully consider and to finally dispose of every question which may arise out of the requirements of particular shippers or the peculiarities of individual situations. Respondents concede that certain of the present rates are improperly aligned, as, for example, the rates on peaches from stations on the Louisville & Nashville north of Calera, Ala., which are higher than the rates from stations south thereof to and including Montgomery, and the rates to Sioux City, Iowa, all of which exceed the rates to St. Paul, Minn. Doubtless there are other instances not disclosed of record where the present rates should be modified, but the revision, as a whole, will eliminate many existing inconsistencies and discriminations, and will more equitably adjust the rates of competing shippers, producing sections, and markets. That the increased rates are not excessive, considering the nature of the traffic and the special services, facilities, and equipment devoted to it, is satisfactorily proven by the numerous comparisons with the rates on similar commodities from other producing sections, and between other producing and consuming points, many of which have been fixed or considered by this Commission; *Florida Fruit & Vegetable Shippers Pro. Asso. v. A. C. L. R. R. Co.*, 14 I. C. C., 476, 17 I. C. C., 552; *Truck Growers Asso. v. A. C. L. R. R. Co.*, 20 I. C. C., 190; *Bahrenburg, Bro. & Co., v. A. C. L. R. R. Co.*, *supra*; *Waxelbaum & Co. v. A. C. L. R. R. Co.*, 12 I. C. C., 178; *1915 Western Rate Advance Case*, *supra*; by comparisons with rates on other moving commodities not requiring special transportation services, equipment, or facilities; and by other facts of record.

We therefore find that the increased carload rates of the east side lines have been justified. This finding is without prejudice to a further examination into the reasonableness or propriety of any particular rate included in the general adjustment of which complaint may be made, and it is of course expected that respondents will promptly correct admitted errors in the present rates, some of which have been referred to herein.

LESS-THAN-CARLOAD RATES.

The less-than-carload movement on the east side lines of commodities involved in this proceeding is very small. On the southern lines of the Illinois Central system only 4.26 per cent of the fruit and vegetable traffic in 1915 consisted of less-than-carload ship-

ments. The increased less-than-carload rates are, as a rule, lower than the corresponding class rates, the exception being where the latter are modified by water competition. The rate on beans from Crystal Springs to Chicago, for example, is 90 cents as against a class rate of \$1.36. They also compare favorably with the less-than-carload rates from other producing sections. The former rates on most of the vegetables, with the exception of onions, potatoes, cabbage, squash, cucumbers, and garlic, from New Orleans to eastern trunk line territory were any-quantity rates. From interior points both carload and less-than-carload rates were and are published to that territory and in the readjustment the same practice was followed in respect of rates from New Orleans. The change appears to be in the interest of uniformity and to eliminate discrimination. No evidence was offered in opposition to these increased less-than-carload rates and upon all the facts of record we find them to have been justified.

MINIMUM WEIGHTS.

The following statement submitted by respondents shows the present and the former minimum weights in comparison with the minimum weights applying from producing territories in Florida and Texas and those named in the various classifications:

Commodity.	Former minimum weights.	Present minimum weights.	Minimum weights from Florida.	Minimum weights from Texas.	Minimum weights provided in classifications.		
					Southern.	Western.	Official.
Potatoes.....	20,000	24,000	30,000	24,000	¹ 30,000	30,000	36,000
Watermelons.....	20,000	24,000	24,000	24,000	24,000	24,000	24,000
Cantaloupes.....	20,000	24,000	24,000	20,000	24,000	24,000	24,000
Muskmelons.....	20,000	24,000	.....	.....	24,000	24,000	24,000
Onions ²	20,000	24,000	20,000	24,000	24,000	24,000	24,000

¹ In bags, 24,000.

² Without tops.

The former minimum on potatoes varied from 20,000 pounds to 30,000 pounds, dependent upon the season of the year and the destination territory. The present minima of 24,000 pounds during the months of March, April, May, and June and 30,000 pounds in other months apply to all destinations. This is the rule obtaining in central freight association territory. The official classification minimum of 36,000 pounds is reduced to 30,000 pounds during the months June to September, inclusive. Respondents testified that investigation has shown that these commodities can be and are loaded to the present minimum weights. There is no evidence to the contrary, and, as it appears that their adoption will be in the interest of uniformity, the increased minimum weights are found to have been justified.

MIXED CARLOAD RULE.

The former rule relating to mixed carloads, which is reissued in the tariffs under suspension, reads as follows:

When two or more articles are shipped in a mixed carload by one shipper from one station on one day to one consignee and one destination the carload rate on each article shall be applied, subject to a minimum weight of 20,000 pounds. When the aggregate weight of a mixed carload shipment does not amount to 20,000 pounds, add to the weight of the heaviest loaded article in the shipment sufficient to make minimum weight 20,000 pounds, except that, when the shipment consists of two or more articles of equal weight, the weight sufficient to make the minimum weight of 20,000 pounds shall be added to the weight of the lowest rated article.

Under the suspended tariffs when cantaloupes, muskmelons, onions, potatoes, or watermelons, commodities taking a minimum of more than 20,000 pounds, are included in the mixture and their weight exceeds one-third of 20,000 pounds, the highest carload minimum provided for any article in the car applies. Respondents admit that the mixed carload rule as published by certain lines does not clearly express its intent and state that the conflicting provisions thereof will be reconciled. One objection urged against it is that as the refrigeration charge is based on the weight of the freight, subject to the carload minimum, the inclusion of potatoes and melons in the mixed carload might result in increased refrigeration charges, although these articles do not require refrigeration. We think, however, that this objection is not valid and find that, subject to being corrected in the instances referred to, the change in the mixed carload rule has been justified.

ESTIMATED WEIGHTS.

Following is a statement of the principal changes in estimated weights:

Commodity.	Package.	Former.	Present.
		<i>Pounds.</i>	<i>Pounds.</i>
Corn (green).....	4½-bushel barrel.....	¹ 140	146
Do.....	4-bushel barrel.....	¹ 125	130
Do.....	3-bushel barrel.....	¹ 94	98
Cucumbers.....	½ bushel.....	20	21
Do.....	½ bushel.....	18½	14
Okra.....	½ bushel.....	20	21
Do.....	½ bushel.....	13½	14
Onions (dry).....	1 bushel.....	50	51
Peaches.....	½ bushel.....	22½	20
Peas.....	½ bushel.....	13½	12
Tomatoes (unwrapped).....	½ bushel.....	25	20
Do.....	6-basket crates.....	37½	45
Turnips.....	½ bushel.....	12	14
Potatoes.....	1 bushel.....	55	57

¹ Applies only from New Orleans to certain territory.

In addition to these changes many estimated weights were established where none were formerly provided, and the application of

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others has been territorially extended. Most, but not all, of the changes are based upon actual tests made by respondents. The necessity for the use of estimated instead of actual weights in the fruit and vegetable traffic as well as the desirability of uniformity has been established in other proceedings. *New Orleans Shippers' Assn. v. I. C. R. R. Co., supra.*

We find that the changes in estimated weights have been justified.

REFRIGERATION CHARGES.

The only refrigeration rates in issue are carload rates from stations on the Louisiana Railway & Navigation Company's line, published by the Illinois Central. Formerly shippers from those stations had the option of icing cars at their own labor and expense or of requiring the carrier to perform the service at a stated charge. Under the provisions of the suspended tariffs this optional privilege was discontinued and stated charges which applied in all cases were established. The latter is the rule in effect at all stations on the Illinois Central south of the Ohio River, except at New Orleans, where shippers are given the option. This exception is to meet the practice of the Louisville & Nashville, which accords the optional privilege not only at New Orleans, but at all other stations. Shippers at Alcazar, La., a local point on the line of the Louisiana Railway & Navigation Company 25 miles from New Orleans, protested against the change, claiming that it would materially increase their charges. The increased rate from Alcazar to Chicago, for example, is 22½ cents per 100 pounds of freight, minimum \$45 per car. Alcazar is 13 miles from Kenner, the junction point where shipments are delivered to the Illinois Central. In support of the protest a shipper of vegetables from New Orleans to Chicago submitted statements purporting to give the actual cost of refrigeration of the shipments iced at his own expense under the optional plan during the months January to July, inclusive, 1916. The figures given by months are as follows:

	Cars.	Icing en route.		Initial icing.	Total per car.
		Total.	Average.		
January.....	33	\$178.44	\$5.51	\$11.00	\$16.51
February.....	31	169.80	5.48	11.00	16.48
March.....	55	377.58	6.87	11.00	17.87
April.....	42	348.35	8.30	11.00	19.30
May.....	60	554.91	9.42	11.00	20.42
June.....	36	342.26	9.51	11.00	20.51
July.....	10	96.90	9.69	11.00	20.69

As the average weight of these shipments was upward of 20,000 pounds the icing charges per car under stated, or "inclusive," rates

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would have been more than \$10 per car at the tariff rate from New Orleans of 20 cents per 100 pounds. This witness further testified that more than 1,000 carloads had been shipped by him from New Orleans to Chicago during the years 1915 and 1916, iced under his instructions; that no shipments had been refused on account of bad order, and that the average amount of ice remaining in bunkers upon arrival of cars at Chicago exceeded the average amount remaining in cars which moved under inclusive charges.

In former proceedings we have considered the respective merits of a stated fixed charge for refrigeration as compared with so-called "shippers' icing," and have found the former preferable, largely on the ground that it is certain and affords less opportunity for favoritism. *Refrigeration Charges on Fruits and Vegetables*, 29 I. C. C., 653. This approval was of course with the understood proviso that the stated charge must be reasonable. The carriers' main contention in favor of a stated charge is that it leaves the shipper no incentive to "skimp" the icing, and is therefore in the nature of insurance against loss and damage.

It is shown that the increased refrigeration rates are not out of line with the current rates from near-by points and for similar distances in other territories. In *Kenner Truck Farmers' Assn. v. I. C. R. R. Co.*, 32 I. C. C., 1, we held that a refrigeration charge of \$40 per car from Kenner, La., and other points near New Orleans to Chicago was not unreasonable and also that the practice of the Illinois Central in maintaining a different rule for icing at New Orleans was justified by the competition of the Louisville & Nashville at that point. We find that the increased refrigeration charges have been justified.

ORIGINATING TERRITORY WEST OF THE MISSISSIPPI RIVER.

The readjustment from west side territory involves only the carload rates on the different kinds of fruits, vegetables, and melons. The west side lines, of which the Southern Pacific lines in Louisiana, the Texas & Pacific, the Missouri Pacific-Iron Mountain system, and the Missouri, Kansas & Texas Railway are representative, rely largely upon our decision in the *Texas Case*, *supra*, to justify the increased rates from Louisiana, Arkansas, Oklahoma, and portions of the states of Missouri and Kansas. These respondents contend that there were as cogent reasons for increasing the rates from Arkansas, Oklahoma, and Louisiana as there were formerly from Texas, and state that the only reason the instant territory was not included in the Texas revision was the inability to perfect contemporaneously therewith a general readjustment of the rates from Louisiana and from the territory east of the Mississippi River.

They assert that the former rate structure was grossly defective and that it discriminated against Texas producers in favor of those in Louisiana, Arkansas, and Oklahoma.

In theory the present adjustment regards the rate on potatoes as the basic rate. The rate on that commodity was established before other vegetables began to move, and its application has been gradually, and it is said unwarrantably, extended to vegetables generally. Rates on other vegetables are fixed at various differentials higher than on potatoes, taking into consideration the transportation characteristics of each commodity. The relation of the rates on one vegetable to those on another and to the rates on potatoes is indicated in the following item, copied from the principal joint tariff of the west side lines:

Bases for rates on vegetables other than potatoes.

Commodities.	Bases for rates.
(A) Cabbage, onions (without tops), rutabagas, and turnips: Straight or mixed carloads, minimum weight 24,000 pounds (see exceptions).	5 cents per 100 pounds over potato rates.
(B) Garlic, kohlrabi, eschalots, onions (with tops), leeks, beets, green corn, carrots, squash, parsnips, radishes, cucumbers, oyster plant, horse-radish roots, onion sets, pumpkins: In straight or mixed carloads, minimum weight 20,000 pounds (see exceptions).	6 cents per 100 pounds over potato rates.
(C) Greens, parsley, peppers, spinach, okra, eggplant, anise, chicory, celery, endive, escarole, lettuce, mint, romain, rhubarb, artichokes, asparagus: In straight or mixed carloads; minimum weight 20,000 pounds, except that on lettuce in straight carloads a minimum weight of 17,500 pounds will apply from all points, except stations on V., S. & P. Ry. (see exceptions).	13 cents per 100 pounds over potato rates.
(D) Tomatoes, beans (green), peas (green), cauliflower: Straight or mixed carloads, minimum weight 20,000 pounds (see exceptions).	11 cents per 100 pounds over potato rates.
EXCEPTIONS.	
Cabbage: In straight carloads, minimum weight 24,000 pounds, from points in Louisiana.	Potato rates will apply.
Articles described in "section B" from Louisiana points to points in note below.	7 cents per 100 pounds over potato rates.
Articles described in "section C" from Louisiana points to points in note below.	15 cents per 100 pounds over potato rates.
Articles described in "section D" from Louisiana points to points in note below.	13 cents per 100 pounds over potato rates.

The points referred to in the "note" are 40 cities in Minnesota, Wisconsin, northern Michigan, and northern Illinois, but not including Chicago. The higher differentials from Louisiana points to those cities are not adequately explained. The grouping of cabbage and potatoes from Louisiana differs from that in the Texas adjustment, in which cabbage is rated 5 cents higher than potatoes.

The west side respondents, as well as those serving the territory east of the Mississippi River, urge that the former rates were too low, having been originally established as "missionary" rates to aid in developing the industry. Their testimony and contentions in respect of the special services, facilities, and equipment required in the transportation of fruits and vegetables are also similar and need not be restated.

The additional revenue which the increased rates would yield is not of record. It is shown, however, that upon the traffic from Louisiana handled by the Texas & Pacific Railway in 1915 the earnings under the present rates would have been about 18 per cent greater. On 87 carloads of strawberries, peaches, pears, potatoes, cantaloupes, and watermelons received at Topeka in 1915 the aggregate charges under the present rates would have been \$761.50 greater, an increase of about 10.7 per cent. The amount of the increases from Louisiana, Arkansas, and Oklahoma on the principal commodities involved and of those which were found justified in the *Texas Case, supra*, stated in cents per 100 pounds, are shown in the following table:

	Texas.	Louisiana.	Arkansas.	Oklahoma.
Berries.....	10	2	5	5
Peaches.....	8	8	3	3
Apples.....			5	5
Tomatoes.....	8	16	16	16
Beets.....	8	11	11	11
Potatoes.....	5	5	5	5
Lettuce.....	8	18	18	18
Cabbage.....	5	5	10	10
Onions.....	8	10	10	10
Watermelons.....	5	5	5	5
Cantaloupes.....	8	3	5	5

Greater increases were made in certain instances in order, respondents state, to effect a proper and consistent alignment. The west side revision does not embody any substantial changes in the former groups of origin or destination points. Under the present adjustment, rates from practically the whole of Louisiana are blanketed, except perhaps to the less distant points, such as Little Rock, Ark., and they are made with relation to the rates from New Orleans. It appears that the movement of fruits and melons from Louisiana is insignificant and that the vegetable traffic consists principally of potatoes, cabbage, and onions. However, a full line of rates on all fruits and vegetables from all points in west side territory was established irrespective of the volume of the movement. The principal producing points in Louisiana are in the southern portion of the state, on the lines of the Morgan's Louisiana & Texas Railroad, and on those of the Texas & Pacific and the St. Louis, Iron Mountain & Southern Railway south of Alexandria. The vegetables produced in this section are said to be more perishable than those grown farther north in west side territory.

Kansas City, St. Louis, and Chicago are important markets for the products of the territory west of the Mississippi River. Kansas City and St. Louis are also basing points for the rates to destinations beyond. The present and the former rates on potatoes, onions, and

cabbage from Louisiana to Kansas City, St. Louis, Chicago, Omaha, and Minneapolis, as compared with the current rates on similar traffic from Texas and from New Orleans to the same destinations, are shown in the following table:

Comparisons of the present and former rates on potatoes, cabbage, and onions from Louisiana points with the rates from Texas and New Orleans on the same commodities.

	Dis- tance.	Potatoes.			Cabbage.			Onions (without tops).		
		Rate.	Ton- mile earn- ings.	Car- mile earn- ings.	Rate.	Ton- mile earn- ings.	Car- mile earn- ings.	Rate.	Ton- mile earn- ings.	Car- mile earn- ings.
To Kansas City, Mo., from—	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
New Orleans.....	867	52	12	14.4	52	12	13.8	52	12	14.4
Texas.....	670	45	13.4	16	50	15	18	58	17.3	20.7
Louisiana ¹	755	{ 35	9.2	11.1	35	9.2	11.1	35	9.2	11.1
		{ 40	10.6	12.7	40	10.6	12.7	45	11.9	14.3
To St. Louis, Mo., from—										
New Orleans.....	698	40	11.4	13.7	40	11.4	13.1	40	11.4	13.7
Texas.....	778	45	11.5	13.8	50	12.8	15.4	58	14.9	17.8
Louisiana ¹	609	{ 35	10.4	12.5	35	10.4	12.5	35	10.4	12.5
		{ 40	11.9	14.2	40	11.9	14.3	45	13.4	16
To Chicago, Ill., from—										
New Orleans.....	912	47	10.3	12.3	47	10.3	11.8	47	10.3	12.3
Texas.....	1,037	52	10	12.03	57	11	13.2	65	12.5	15
Louisiana ¹	933	{ 42	9	10.8	42	9	10.8	42	9	10.8
		{ 47	10	12	47	10	12	52	11.1	13.3
To Omaha, Nebr., from—										
New Orleans.....	1,075	56	10.4	12.4	56	10.4	11.9	56	10.4	12.4
Texas.....	866	49	11.3	13.5	54	12.4	15	62	14.3	17.1
Louisiana ¹	951	{ 39	8.2	9.8	39	8.2	9.8	39	8.2	9.8
		{ 44	9.2	11	44	9.2	11	49	10.3	12.3
To Minneapolis, Minn., from—										
New Orleans.....	1,241	56	9.4	10.8	56	9.4	10.4	56	9.4	10.8
Texas.....	1,240	57	9.2	11	62	10	12	70	11.3	13.5
Louisiana ¹	1,255	{ 48	7.6	9.1	48	7.6	9.1	48	7.6	9.1
		{ 52	8.3	9.9	52	8.3	9.9	57	9.1	10.9

¹ Former rates on cabbage from Napoleonville, La., 3 cents higher than on potatoes; from Lockport, La., to Chicago, St. Louis, and Minneapolis, 7 cents to 9 cents higher than on potatoes. Present rates on cabbage and potatoes are the same.

² Former.

³ Present.

The distances from Texas stated in the above table are the approximate average distances from Tyler, Spring, Milano, and San Antonio. Those from Louisiana are the approximate average distances from Ruston, Alexandria, Napoleonville, Lake Charles, and Lockport. These points take a common rate and in respect of distances appear to be fairly representative of the different producing districts in those states. The earnings per car-mile are based on the current rates from Texas and the present rates from New Orleans herein found to have been justified, using the minimum carload weight of 24,000 pounds, except that the earnings on cabbage from New Orleans are based on the average loading of 28,000 pounds per car shown in the exhibits filed by the Illinois Central. The carload minimum on cabbage from east side territory is 20,000 pounds. The earnings per ton-mile and per car-mile under the present rates on cabbage and potatoes from Louisiana to the destinations named are usually

somewhat less than those yielded by the rates from Texas and from New Orleans. This is also true of the present rates to points in central freight association and trunk line territories, which it is unnecessary to particularly consider, as they are made on basis of the present arbitraries over St. Louis. It will be noted, however, that the rates on onions from Louisiana to St. Louis, Minneapolis, and Chicago exceed the rates from New Orleans to the same destinations. The same situation exists in the case of rates on onions and certain other commodities to other destinations.

The present and the former rates from representative Louisiana points to Little Rock, Fort Smith, and Memphis are stated in the following table, which also shows comparisons with the rates and the earnings per ton-mile and per car-mile from producing sections east of the Mississippi River:

Comparisons of the present and former rates from Louisiana points to Fort Smith, Little Rock, and Memphis with rates for similar distances from points in Mississippi and Tennessee.

	Distances.	Potatoes and cabbage.						Onions.					
		Former—			Present—			Former—			Present—		
		Rate.	Earnings per ton-mile.	Earnings per car-mile.	Rate.	Earnings per ton-mile.	Earnings per car-mile.	Rate.	Earnings per ton-mile.	Earnings per car-mile.	Rate.	Earnings per ton-mile.	Earnings per car-mile.
	<i>Miles.</i>	<i>Cts.</i>	<i>Miles.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Miles.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Miles.</i>	<i>Cts.</i>	<i>Cts.</i>	<i>Miles.</i>	<i>Cts.</i>
.....	322	25	15	18	30	18	21.6	25	15	18	35	21	25.2
.....	196	25	24.9	22.2	30	22.2	22.8	25	24.9	22.2	35	27.6	25.2
.....	319	30	18.8	22.5	35	21.9	25.3	30	18.8	22.5	40	25	30
.....	300	25	12.8	15.4	30	15.4	18.4	25	12.8	15.4	35	17.8	21.6
.....	277	25	18	21.6	30	21.6	25.6	25	18	21.6	35	25.2	30.2
.....	225	30	17.9	21.4	35	20.9	25.1	30	17.9	21.4	40	22.8	25.6
.....	451	30	13.3	15.9	35	15.5	18.6	30	13.3	15.9	40	17.7	21.2
.....	393	30	15.2	18.3	35	17.3	21.3	30	15.2	18.3	40	20.3	24.4
.....	434	30	13.5	16.5	35	15.1	19.3	35	13.5	16.5	40	18.4	22.1
.....	338	30	11.2	13.4	35	13.1	15.6	30	11.2	13.4	40	14.9	17.9
.....	405	30	14.8	17.7	35	17.2	20.7	30	14.8	17.7	40	19.7	23.7
.....	473	30	12.6	15.2	35	14.7	17.7	30	12.6	15.2	40	16.9	20.3
.....	500				37	13	15.6				37	13	15.6
.....	420				32	14.2	18.2				32	14.2	18.2
.....	347				34	15.4	19.4				34	15.4	19.4

¹ Cabbage, 21 cents.

² Minimum weight, cabbage, 20,000 pounds; minimum weight, potatoes and onions, 34,000 pounds.

³ On cabbage.

In the following statement the present rates on vegetables representative of the different classes from producing points in Arkansas and Oklahoma to Kansas City, Omaha, Minneapolis, St. Louis, and Chicago are contrasted with the current rates from Tyler, Spring, Milano, and San Antonio, Tex., using, as heretofore, the average distances from those points:

Comparisons of the present rates on vegetables from Arkansas and Oklahoma points with those from Texas producing points.

	Dis- tance.	Potatoes.			Cabbage.			Tomatoes.			Lettuce.			Beets.		
		Rate.	Per ton- mile.	Per car- mile.	Rate.	Per ton- mile.	Per car- mile.	Rate.	Per ton- mile.	Per car- mile.	Rate.	Per ton- mile.	Per car- mile.	Rate.	Per ton- mile.	Per car- mile.
To Kansas City, Mo., from—	Miles.	Cents.	Mills.	Cents.	Cents.	Mills.	Cents.	Cents.	Mills.	Cents.	Cents.	Mills.	Cents.	Cents.	Mills.	Cents.
	306	30	13.3	21.9	35	21.3	25.6	41	25	25	43	25.2	22.9	36	21.9	21.9
	Fort Smith, Ark.	35	15.8	19	40	13.1	21.3	46	20.9	20.9	48	21.8	19	41	18.6	18.6
	Horatio, Ark.	30	20.7	24.8	35	24.1	28.9	41	25.2	25.2	48	29.6	25.9	36	24.8	24.8
	Fort Gibson, Okla.	45	13.4	16.1	50	15	18	58	17.3	17.3	58	17.3	15.1	58	17.3	17.3
To Omaha, Nebr., from—																
	Fort Smith.	38	14.5	17.4	43	16.4	19.6	49	18.7	18.7	51	19.4	17.8	44	16.8	16.8
	Horatio.	43	13.5	16.2	48	15.1	18.1	54	16.9	16.9	56	17.6	15.4	49	15.4	15.4
	Fort Gibson.	38	15.6	18.7	43	17.6	21.1	49	20	20	51	20.9	18.2	44	18.1	18.1
	Texas.	49	11.3	13.5	54	12.4	15	62	14.3	14.3	62	14.3	12.5	62	14.3	14.3
To Minneapolis, Minn., from—																
	Fort Smith.	68	11.6	13.9	53	12.8	15.8	59	14.2	14.2	61	14.7	12.8	54	13	13
	Horatio.	53	10.8	13	58	11.9	14.3	64	13.1	13.1	66	13.5	11.8	59	12.1	12.1
	Fort Gibson.	48	12.2	14.6	53	13.4	16.1	59	14.9	14.9	61	15.4	13.4	54	13.6	13.6
	Texas.	57	9.2	11	62	10	12.6	70	11.2	11.2	70	11.2	9.8	70	11.2	11.2
To St. Louis, Mo., from—																
	Fort Smith.	30	14.4	17.3	35	16.7	20	41	19.6	19.6	43	20.6	18	36	17.2	17.2
	Horatio.	35	12.4	14.8	40	14.2	17	46	16.3	16.3	48	17	14.8	41	14.5	14.5
	Fort Gibson.	30	13.4	16	35	15.6	18.7	41	18.2	18.2	43	19.1	16.7	36	16	16
	Texas.	45	11.5	13.8	50	12.8	15.4	58	14.9	14.9	58	14.9	13	58	14.9	14.9
To Chicago, Ill., from—																
	Fort Smith.	42	13	14.4	47	13.4	16	53	15.1	15.1	55	15.6	13.7	48	13.7	13.7
	Horatio.	47	11.1	13.3	52	12.2	14.7	58	13.7	13.7	60	14.1	12.3	53	12.5	12.5
	Fort Gibson.	42	11.5	13.8	47	12.8	15.8	53	14.4	14.4	55	15	13.1	48	13.1	13.1
	Texas.	52	10	12	57	11	13.2	65	12.5	12.5	65	12.5	10.9	65	12.5	12.5

Earnings per car-mile are based on the minimum carload.

Potatoes are shipped from numerous points in Louisiana, Arkansas, and Oklahoma and are usually transported in stock cars, except possibly from the extreme southern portion of Louisiana. Much of the testimony relates to the increased rates on potatoes, in opposition to which protestants submit the following comparisons among many others of similar character and effect:

Comparison of present rates on potatoes from Fort Smith, Ark., to various markets with current rates on potatoes for similar distances.

From—	To—	Miles.	Rate.	Ton-mile earnings.	Car-mile earnings.	Carload minimum.
			<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Pounds.</i>
Fort Smith, Ark.....	St. Louis, Mo.....	417	30	14.4	17.3	24,000
Do.....	Omaha, Nebr.....	522	38	14.6	17.5	24,000
Do.....	Chicago, Ill.....	701	42	12.0	14.4	24,000
Do.....	Minneapolis, Minn....	817	48	11.7	13.9	24,000
Do.....	Joplin, Mo.....	174	27	31.0	37.2	24,000
Waupaca, Wis.....	St. Louis, Mo.....	505	20	7.9	14.2	30,000
Fremont, Nebr.....	do.....	451	18	8.0	12.0	30,000
Grand Island, Nebr.....	Chicago, Ill.....	632	30	9.5	14.2	30,000
Appleton, Wis.....	St. Louis, Mo.....	463	20	8.5	15.3	30,000
Grand Rapids, Wis.....	do.....	528	20	7.6	13.6	30,000
Waupaca, Wis.....	Kansas City, Mo.....	675	25	7.4	13.3	30,000

¹ During months of October to May, inclusive; except in cars under 31 feet in length inside measurement or 36 feet and under outside measurement when equipped with noncollapsible end ice bunkers, minimum weight, 30,000 pounds. During other months, 20,000 pounds.

² During months of October to May, inclusive; during other months, 24,000 pounds.

Fort Smith is a heavy shipping point in the Arkansas Valley, a district from which about 1,800 cars of potatoes were shipped in 1916. The rate on potatoes from a large group of Arkansas and Oklahoma points is the same as that from Fort Smith, and respondents assert that the distances from Fort Smith are not fairly representative of the average haul from the entire group. Protestants show that from Fort Smith to St. Louis the distance is only 83.9 per cent of the average distance from 9 Wisconsin potato-shipping points to St. Louis, but that the former rate from Fort Smith to St. Louis was 125 per cent, and the present rate is 150 per cent of the average rate from the Wisconsin points; that from Waupaca, Wis., to 13 destinations in Kansas, Nebraska, and Missouri, an average distance of 759 miles, the former average rate was 29.6 cents; that from Fort Smith to the same destinations the average distance is 351 miles, the average former rate was 26.4 cents, and the average present rate is 31.4 cents. It is also shown that the rates from Fort Smith in many instances exceed the rates applying in the opposite direction. The southbound rates from Wisconsin potato-shipping points to Fort Smith are 3 cents less than the former rates in the opposite direction and are 8 cents less than the present northbound rates. The rate from Kansas City to Fort Smith is 25 cents, and in the opposite direction the present rate is 30 cents. It is also shown that the rates from Fort Smith are higher than the rates from Ne-

braska and Colorado points for similar distances. The rate from Prosser, Nebr., to Kansas City, 309 miles, for example, is 17 cents, whereas from Fort Smith to Paola, Kans., 306 miles, the former rate was 25 cents and the present rate is 30 cents.

Protestants concede that the transportation conditions affecting the rates thus compared are substantially different, but contend that the dissimilarity is not so great as to justify the disparity in rates. Potatoes from the northern states compete with those from Arkansas and Oklahoma in certain seasons and markets, but the principal movement from the north is in winter. The northern potatoes take a higher minimum in winter, but must then be shipped in refrigerator cars or in heated box cars. The general level of the class rates from Wisconsin to the destinations named is lower than from Arkansas, the first-class rate from Fort Smith to St. Louis, 417 miles, for example, being \$1.10, and from Waupaca to St. Louis, 505 miles, 63 cents. In *In re Potato Rates from South Dakota, etc.*, 25 I. C. C., 247, we disapproved proposed increased rates on potatoes from South Dakota, western Nebraska, Colorado, and similar territory, to the Mississippi River and points east, holding that the effective rates, earning from 7 to 10 mills per ton per mile for distances from 500 to 950 miles, could not be regarded as unduly low.

Two of the respondents, the Atchison, Topeka & Santa Fe and the Union Pacific, filed tariffs increasing the rates on potatoes from Kansas points in the Kaw Valley to the south and southeast. The former rate of 34 cents from Bonner Springs, Kans., to Baton Rouge, La., for example, a distance of 806 miles, yielded 8.4 mills per ton-mile, or 10.1 cents per car-mile. The present rate is 39 cents, under which the revenue per ton-mile is 9.67 mills and per car-mile 11.6 cents. For the distance of 498 miles from Fort Smith to Baton Rouge the former rate of 32 cents yielded 12.98 mills per ton-mile, or about 15.4 cents per car-mile. The present rate from Fort Smith is 37 cents. Other lines serving this section have not filed increased rates from Kansas. No specific testimony was offered in support of these increased rates.

The record in this case indicates that onions usually move in stock cars. In the *Texas Case, supra*, it was found that onions move from that state in refrigerator cars under ventilation. Vegetables other than potatoes and onions move regularly in refrigerator cars and usually under refrigeration. The circumstances attending their transportation are substantially the same as those described in our discussion of the rates on similar commodities from the territory east of the Mississippi River. There is no specific testimony as to the volume of movement of many of these commodities. The increased rates are usually somewhat higher, differences in distances and car-

load minima considered, than the present rates from the territory east of the Mississippi River, as is shown by the following comparisons:

Comparisons of the present rates on vegetables from Louisiana and Arkansas points with the present rates from points east of the Mississippi River.

The earnings per car-mile shown in the above statement are based on the carload minima, 20,000 pounds on beets and tomatoes; 24,000 pounds on potatoes; 24,000 pounds on cabbage and onions from points west of the Mississippi River; 20,000 pounds on cabbage and 24,000 pounds on onions from east side territory; 17,500 pounds on lettuce from west of the Mississippi River, and 20,000 pounds from east side territory.

Strawberries move in considerable quantities from certain districts, particularly those surrounding Van Buren and Judsonia, Ark. The following statement shows the present and the former rates and the earnings per ton-mile and per car-mile from Judsonia and from other Arkansas points to various destinations, as compared with the current rates from Jacksonville, Tex., and the present rates from Humboldt, Tenn., and Independence, La., herein approved:

43 I. C. C.

Comparisons of the present and former rates on strawberries from Arkansas points to various destinations with the rates from Humboldt, Tenn., Independence, La., and Jacksonville, Tex., to the same destinations.

	Dis- tance.	Former—			Present—		
		Rate.	Ton-mile earnings.	Car-mile earnings.	Rate.	Ton-mile earnings.	Car-mile earnings.
To Kansas City from—	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Springdale, Ark.....	243	53	43.6	37.1	55	45.2	38.4
Judsonia, Ark.....	453	60	36.4	22.5	65	28.6	24.3
Van Buren, Ark.....	310	59	38.1	32.3	64	41.2	35.1
Humboldt, Tenn.....	599	.....	.....	.....	75	26.3	22.4
Independence, La.....	805	.....	.....	.....	85	21.1	17.9
Jacksonville, Tex.....	645	.....	.....	.....	85	26.3	22.4
To Chicago, Ill., from—							
Springdale, Ark.....	626	77	24.6	20.8	82	26.2	22.3
Judsonia, Ark.....	576	68.1	23.6	22.6	80	27.7	23.6
Van Buren, Ark.....	695	80	28	19.5	86	24.7	21
Humboldt, Tenn.....	467	.....	.....	.....	48	20.5	17.4
Independence, La.....	850	.....	.....	.....	67	15.7	13.3
Jacksonville, Tex.....	920	.....	.....	.....	94	20.4	17.3
To St. Louis, Mo., from—							
Springdale, Ark.....	341	55	32.3	27.3	60	25.1	20.9
Judsonia, Ark.....	292	45	30.8	26.2	55	27.3	23
Van Buren, Ark.....	411	59	28.7	24.4	65	31.6	26.8
Humboldt, Tenn.....	254	.....	.....	.....	42	33.1	28
Independence, La.....	636	.....	.....	.....	53	18.2	15.5
Jacksonville, Tex.....	634	.....	.....	.....	85	26.8	22.7
To Minneapolis, Minn., from—							
Springdale, Ark.....	739	84	22.7	19.3	89	24.1	20.4
Judsonia, Ark.....	878	85.5	19.7	16.7	91.5	20.8	17.7
Van Buren, Ark.....	806	91.5	22.6	19.3	97.5	24.1	20.5
Humboldt, Tenn.....	835	.....	.....	.....	84	20	17.1
Independence, La.....	1,179	.....	.....	.....	95	16.1	13.7
Jacksonville, Tex.....	1,075	.....	.....	.....	101.5	18.8	16
To Omaha, Nebr., from—							
Springdale, Ark.....	437	71	32.4	27.6	73	33.4	28.4
Judsonia, Ark.....	649	75	23.1	19.6	80	24.6	20.9
Van Buren, Ark.....	504	77	30.5	26.1	82	32.2	7.6
Humboldt, Tenn.....	765	.....	.....	.....	77	20.1	7.1
Independence, La.....	999	.....	.....	.....	90	18	15.2
Jacksonville, Tex.....	839	.....	.....	.....	90	21.4	18.2

¹ Minimum, 20,000 pounds.

Special complaint is made of the rates from the Judsonia district as compared with the rates from the Humboldt, Tenn., district. St. Louis is an important market for the berries produced in both districts. The former rates from Judsonia and Humboldt to St. Louis were 45 cents and 39 cents, respectively, the distances being 292 miles and 254 miles. The present rates are 55 cents from Judsonia and 42 cents from Humboldt. An exhibit filed by protestants covering 22 cars of strawberries shipped from various Arkansas and Missouri points to Omaha, Nebr., in 1915, shows that for an average haul of 453 miles the former average rate of 61.5 cents yielded 27.3 mills per ton-mile and 23.5 cents per car-mile. The present average rate of 68.2 cents per 100 pounds from the same points yields 27.9 mills per ton-mile and 24 cents per car-mile. Both the present and the former rates in average exceed the average class rate, which is 58.3 cents. Respondents cite, in comparison, rates from Chadbourn and Tokay, N. C., and from Cape Charles, Va., to eastern destinations, which, as a general rule, are considerably higher

than the present rates for similar distances, but which apply in connection with a minimum weight of 12,000 pounds. The present rates on other kinds of berries and on cherries and grapes are the same as those on strawberries. There is but little testimony relating specifically to these other commodities or to pears and plums, which latter take the same rates as those on peaches.

Peaches are produced principally in southern Missouri and in northwestern Arkansas, but there are other producing districts of lesser importance in Arkansas and Oklahoma. They require refrigeration in transit and expedited service, being comparable with strawberries in those respects. Respondents submitted numerous comparisons of the present rates on peaches with the current rates from various producing sections for similar distances, from which the following table has been compiled:

Comparisons of the former and the present rates on peaches from Arkansas, Missouri, and Oklahoma to Kansas City, Chicago, Omaha, and St. Louis with the rates from Nauvoo, Ala., Fort Valley, Ga., Jacksonville, Tex., and Macon, Ga.

From—	To—	Distance.	Former.			Present.		
			Rate.	Ton-mile earnings.	Car-mile earnings.	Rate.	Ton-mile earnings.	Car-mile earnings.
		Miles.	Cents.	Miles.	Cents.	Cents.	Miles.	Cents.
Muskogee, Okla.....	Kansas City, Mo.....	254	40	31.5	31.5	43	33.8	33.8
Guthrie, Okla.....	do.....	334	40	23.9	23.9	43	25.7	25.7
Durant, Okla.....	do.....	301	45	23	23	48	24.5	24.5
Marionville, Mo.....	do.....	308	35	34.4	34.4	38	37.4	37.4
Koshkonong, Mo.....	do.....	331	40	24.1	24.1	43	26	26
Clarksville, Ark.....	do.....	405	40	19.7	19.7	43	21.2	21.2
Van Buren, Ark.....	do.....	310	40	25.8	25.8	43	27.7	27.7
Muskogee, Okla.....	Chicago, Ill.....	688	55	15.7	15.7	58	16.6	16.6
Guthrie, Okla.....	do.....	776	59	15.2	15.2	62	15.9	15.9
Durant, Okla.....	do.....	835	59	14.1	14.1	63	14.8	14.8
Marionville, Mo.....	do.....	547	51	18.6	18.6	54	19.7	19.7
Koshkonong, Okla.....	do.....	630	51	16.4	16.4	54	17.4	17.4
Clarksville, Ark.....	do.....	722	55	15	15	58	15.8	15.8
Van Buren, Ark.....	do.....	695	55	15.8	15.8	58	16.7	16.7
Muskogee, Okla.....	Omaha, Nebr.....	448	51	22.7	22.7	54	24.1	24.1
Guthrie, Okla.....	do.....	528	51	19.3	19.3	54	20.4	20.4
Durant, Okla.....	do.....	585	55	18.8	18.8	58	19.8	19.8
Clarksville, Ark.....	do.....	599	53	17	17	54	18	18
Van Buren, Ark.....	do.....	504	51	20.2	20.2	54	21.4	21.4
Muskogee, Okla.....	St. Louis, Mo.....	433	44	20.3	20.3	47	21.7	21.7
Guthrie, Okla.....	do.....	534	47	17.6	17.6	50	18.7	18.7
Durant, Okla.....	do.....	694	49	16.2	16.2	53	17.2	17.2
Koshkonong, Mo.....	do.....	525	51	19.4	19.4	54	20.5	20.5
Marionville, Mo.....	do.....	264	49	20.3	20.3	43	22.5	22.5
Koshkonong, Mo.....	do.....	337	49	23.7	23.7	43	25.5	25.5
Clarksville, Ark.....	do.....	449	44	19.6	19.6	47	20.9	20.9
Van Buren, Ark.....	do.....	410	44	21.4	21.4	47	22.9	22.9
Nauvoo, Ala.....	Pittsburgh, Pa.....	899	.....	.....	.....	59	13.7	13.4
Do.....	Buffalo, N. Y.....	904	.....	.....	.....	63	12.6	14.2
Do.....	Philadelphia, Pa.....	938	.....	.....	.....	1.05	21.4	24.1
Fort Valley, Ga.....	Memphis, Tenn.....	480	.....	.....	.....	43	17.9	20.1
Do.....	Nashville, Tenn.....	398	.....	.....	.....	43	21.8	24.6
Do.....	Richmond, Va.....	599	.....	.....	.....	67	22.4	25.2
Do.....	Baltimore, Md.....	751	.....	.....	.....	80	24.3	29.0
Jacksonville, Tex.....	Kansas City, Mo.....	645	.....	.....	.....	55	18	18
Do.....	St. Louis, Mo.....	694	.....	.....	.....	58	18.9	18.3
Do.....	Omaha, Nebr.....	539	.....	.....	.....	63	15	15
Macon, Ga.....	Baltimore, Md.....	722	.....	.....	.....	73	20.2	22.7
Do.....	Philadelphia, Pa.....	817	.....	.....	.....	76	18.6	20.9
Do.....	New York, N. Y.....	639	.....	.....	.....	76	19.7	22.3

The carload minimum under the present rates is 20,000 pounds. From Nauvoo, Ala., Macon and Fort Valley, Ga., the earnings per car-mile are based on a carload minimum of 22,500 pounds. The rate from Macon to New York was established by the Commission in *Waxelbaum & Co. v. A. C. L. R. R. Co., supra*. The rates from Jacksonville, Tex., were approved in the *Texas Case, supra*. Protestants call attention to the fact that the rates on peaches from numerous Arkansas, Missouri, and Oklahoma points to destinations in western Kansas exceed the rates to Colorado common points, and also cite instances where they are higher than the rates applying in the opposite direction. For example, the current rate on peaches from Chicago to Little Rock, Ark., is 41 cents, whereas the present rate in the opposite direction is 58 cents. They assert that the peach-growing industry declined under the former rates, and that it can not stand the increase of 3 cents per 100 pounds; but, as we have indicated in our discussion of the east side rates, the reasonableness of rates must be tested by other considerations.

But little testimony was offered with respect to the rates on apples, which are increased 5 cents per 100 pounds from Arkansas and Oklahoma points. The present rates from Louisiana do not exceed the former rates. The present rates from representative producing points are stated in the following table, which also shows the current rates from Dublin, Tex.:

Comparisons of the present rates on apples from Louisiana, Arkansas, and Oklahoma points with rates from Dublin, Tex.

From—	To Kansas City.		To Omaha.		To St. Louis.		To Chicago.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	Miles.	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.	Cents.
Alexandria, La.	683	58	877	62	599	58	883	65
Van Buren, Ark.	310	32	504	39	411	33	696	43
Horatio, Ark.	440	37	636	44	563	38	847	48
Fort Gibson, Okla.	290	32	486	39	449	33	733	43
Shawnee, Okla.	380	45	576	50	630	46	801	56
Dublin, Tex.	506	57	790	66	810	62	1,094	69

The rates from Dublin are commodity rates which apply from points on the Fort Worth & Rio Grande Railroad, a branch of the Frisco system extending from Fort Worth to Menard, Tex., and are 13 cents less than the fifth-class rates which apply generally from Texas common-point territory. An exhibit filed by protestants shows that under the former rates from five Arkansas and Missouri groups of origin to Kansas City and to various Kansas points the earnings per ton-mile were from 11.7 mills to 20.7 mills for distances ranging

from 242 miles to 948 miles. For an average distance of 393 miles from the five groups to Kansas City the former average rate yielded about 16.5 mills per ton-mile. In *Ozark Fruit Growers' Asso. v. St. L. & S. F. R. R. Co.*, 16 I. C. C., 134, average rates from Missouri, Kansas, and Arkansas points of 21.5 cents to St. Louis and 19.5 cents to Kansas City, yielding average ton-mile revenues of 15.2 mills and 18 mills, respectively, for the average distances of 282 miles to St. Louis and 210 miles to Kansas City, were found not to be unreasonable. Protestants urge that in comparison with the rates involved in that case and with the current rates from Colorado and New Mexico to Kansas points, the present rates, which as stated exceed the former rates by 5 cents, are unreasonable.

Watermelons and cantaloupes are produced at various points in Arkansas and Oklahoma. Watermelons are regularly shipped in stock cars, while cantaloupes move under refrigeration. Both are rated class C in the western classification, minimum weight 24,000 pounds. In the following table comparisons are made of the present rates from representative producing points with the current rates from Winnsboro, Tex., the present rates from New Orleans, and with the class C rates:

Comparisons of the present rates on watermelons and cantaloupes from Arkansas and Oklahoma points with rates from Texas and New Orleans.

WATERMELONS.

	Distance.	Rate.	Per ten-mile.	Per car-mile.	Class C.
	Miles.	Cents.	Mills.	Cents.	Cents.
To Chicago, Ill., from—					
Rudy, Ark.....	685	35	16.2	12.2	41
Terral, Okla.....	1,013	41	8	9.7	63
Winnsboro, Tex.....	883	47	10.5	12.6	65
New Orleans, La.....	912	47	10.3	12.3	.....
To Minneapolis, Minn., from—					
Rudy.....	813	40	9.8	11.8	46
Terral.....	997	43.5	8.7	10.4	64
Winnsboro.....	1,011	52	10.2	12.3	70
New Orleans.....	1,241	56	9	10.8	.....
To Kansas City, Mo., from—					
Rudy.....	319	24	15	18	29
Terral.....	497	28	11.2	13.5	48
Winnsboro.....	517	40	15.4	18.4	58
New Orleans.....	857	52	12	14.3	.....
To St. Louis, Mo., from—					
Rudy.....	401	28	13.9	16.7	34
Terral.....	798	34	8.5	10.2	58
Winnsboro.....	600	40	13.1	15.7	58
New Orleans.....	698	40	11.4	13.7	.....

Comparisons of the present rates on watermelons and cantaloupes from Arkansas and Oklahoma points with rates from Texas and New Orleans—Contd.

CANTALOUPEs.

	Distance.	Rate.	Per ton-mile.	Per car-mile.	Class C.
	Miles.	Cents.	Mills.	Cents.	Cents.
To Chicago, Ill., from—					
Van Buren, Ark.....	695	40	11.5	11.5	41
Gilham, Ark.....	824	46	11.1	11.1	50
Horatio, Ark.....	821	46	11.2	11.2	50
Winnsboro, Tex.....	803	65	14.5	14.5	65
New Orleans, La.....	912	52	11.4	13.6	.....
To Minneapolis, Minn., from—					
Van Buren.....	806	45	11.1	11.1	46
Gilham.....	915	51	11.1	11.1	64
Horatio.....	935	53	11.3	11.3	64
Winnsboro.....	1,011	70	13.8	13.8	70
New Orleans.....	1,241	61	9.8	9.8	.....
To Kansas City, Mo. from—					
Van Buren.....	310	29	18.7	18.7	29
Gilham.....	421	33	15.7	15.7	40
Horatio.....	441	39	17.7	17.7	40
Winnsboro.....	517	58	22.4	22.4	58
New Orleans.....	867	57	13.1	15.7	.....
To St. Louis, Mo., from—					
Van Buren.....	411	33	16.1	16.1	34
Gilham.....	540	39	14.4	14.4	52
Horatio.....	557	39	14.5	14.5	52
Winnsboro.....	609	58	19	19	58
New Orleans.....	698	45	12.9	12.9	.....

Commodity rates the same as class C rates apply on cantaloupes from Texas, but the increased rates from Arkansas and Oklahoma are usually lower than the class C rates. Respondents testified that the cost of cleaning and slatting stock cars in which watermelons are usually shipped averages \$2.65 per car and is borne by the carriers. It appears that in some instances the rates on cantaloupes and watermelons to points in western Kansas exceed the rates to Colorado common points, and also that they are higher than the rates which apply in the opposite direction.

Protestants submitted numerous comparisons of the earnings under the increased rates on commodities moving under refrigeration with the earnings on other perishable commodities of a higher value, fresh meats, for example, upon which the earnings are less than those yielded by the increased rates on strawberries. Both commodities are rated third class in the western classification, move under refrigeration, and receive expedited service. The empty haul of cars in the fresh meat service is said to be 80 per cent of the loaded movement. Similar comparisons are made with the rates and earnings on cattle. The movement of fresh meats and cattle is not seasonal like that of vegetables, and respondents say that the transportation is analogous to that of transited commodities in that the inbound rates are to some extent influenced by the outbound haul. Fruits and vegetables are also more perishable than fresh meats. Protestants further show that both the former and the present rates to Kansas points are in many instances higher than the class rates, whereas in the Texas adjustment the commodity rates on vegetables

in no case exceed 89 per cent of the class rates. Respondents assert that the class rates from Louisiana are controlled by the rates of the east side lines from New Orleans, and that the Louisiana rates in turn depress those from Arkansas and Oklahoma.

As already stated, the west side adjustment embodies uniform arbitrary increases over the former rates; that is, the amount of the increase from a given point is the same to all destinations, regardless of distance. This results in an adjustment which recognizes and attempts to measure the transportation relationship between the different fruits and vegetables, but, as illustrated below, changes the present distance relation of the rates:

From Van Buren, Ark., to—	Onions.		Beets.		Tomatoes.		Lettuce.	
	Former rates.	Present rates.	Former rates.	Present rates.	Former rates.	Present rates.	Former rates.	Present rates.
Kansas City.....	25	35	25	36	25	41	25	43
St. Louis.....	25	35	25	36	25	41	25	43
Chicago.....	37	47	37	48	37	53	37	55
Minneapolis.....	43	53	43	54	43	59	43	61

In the above examples the increase of 18 cents on lettuce to Kansas City, 328 miles, amounts to 72 per cent; to Minneapolis, 818 miles, 41.9 per cent. The increases on potatoes to St. Louis allowed in the *Texas Case, supra*, were 5 cents for an average distance of about 812 miles; in the rates now before us the same increase is made from Fort Smith to Kansas City, less than half that distance.

Adjustments which arbitrarily fix the rates on one commodity a uniform differential over those on another, without regard to distance, are unscientific and must result in some degree of injustice. This method of fixing rates, however, is not uncommon in western trunk line territory. The former adjustment, whereunder the same rate applied on all vegetables, was no less illogical and undoubtedly discriminated against producers in surrounding states where dissimilarities in the transportation characteristics of the different varieties of vegetables are reflected in the rates. Manifestly the rates on lighter loading and more perishable vegetables moving in refrigerator cars should be higher than the rates on potatoes, which, as stated, usually move from this territory in stock cars.

Upon all of the facts of record we find:

(1) That the increased rates on fruits, vegetables, and melons from points in Louisiana west of the Mississippi River which do not exceed the increased rates from New Orleans or the rates to Colorado common points have been justified.

(2) That where the former rates from points in Louisiana west of the Mississippi River were not higher than the former rates from

New Orleans or to Colorado common points the increased rates, to the extent to which they exceed the increased rates from New Orleans or the rates to Colorado common points, or to which they increase the discrimination against intermediate points in violation of the long-and-short-haul rule of the fourth section, have not been justified.

(3) That the increased rates on potatoes from Arkansas, Oklahoma, Kansas, and Missouri have not been justified.

(4) That the increased rates on vegetables of other kinds from Arkansas, Oklahoma, and Missouri have been justified in part, but to the extent to which they exceed the differentials stated in the suspended schedules over the former rates on potatoes they have not been justified.

(5) That the increased rates on fruits from Arkansas, Oklahoma, and Missouri have not been justified.

(6) That the increased rates on watermelons, cantaloupes, and muskmelons from Arkansas, Oklahoma, and Missouri have been justified in part, but where the former rates were not higher than to Colorado common points the increased rates, to the extent to which they exceed the rates to Colorado common points or to which they increase the discrimination against intermediate points in violation of the long-and-short-haul rule of the fourth section, have not been justified.

An order will be entered requiring respondents to cancel, on or before May 15, 1917, rates published in the suspended schedules which have not been found justified and to establish in lieu thereof, upon not less than five days' notice to the Commission and to the public, other rates which will conform to the conclusions herein announced.

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INVESTIGATION AND SUSPENSION DOCKET No. 903.

BARYTES FROM TENNESSEE.

Submitted January 2, 1917. Decided March 13, 1917.

Proposed increased rates on barytes from producing points in Tennessee to points in New York, New Jersey, Pennsylvania, Delaware, Maryland, Massachusetts, and Rhode Island found justified.

Claudian B. Northrop and *Alex. M. Bull* for Southern Railway Company.

Albert B. Schultz for New Jersey Zinc Company.

A. S. Krebs for the Krebs Pigment & Chemical Company.

Samuel M. Evans for Thompson, Weinman & Company.

REPORT OF THE COMMISSION.

HALL, Commissioner:

By tariffs, filed to become effective August 21, 1916, and September 8, 1916, it is proposed to increase the carload rates on crude barytes and on ground, floated, or pulverized barytes from points in the so-called Sweetwater group on the Knoxville division of the Southern Railway in Tennessee to various points in New York, New Jersey, Pennsylvania, Delaware, Maryland, Massachusetts, and Rhode Island. Upon protests by the New Jersey Zinc Company, which is particularly interested in the rates to Hazard and Palmerton, Pa., the operation of the schedules in question was suspended until June 19, 1917. The Southern Railway Company undertook the burden of justifying the proposed rates and will be referred to as the respondent. The rates are stated in the tariffs in cents per long ton, but respondent says this occurred through error and announced the intention of publishing rates in subsequent issues in cents per 100 pounds. For convenience rates will be stated in cents per 100 pounds throughout this report.

At the hearing respondent introduced evidence in support of a contemplated readjustment, more comprehensive than that embraced in the suspended tariffs and resulting in many instances in greater increases from the Sweetwater group than are proposed in those tariffs, the principal object of which is to align the rates from the Tennessee points with those from Stackhouse, N. C., and King-Creek, S. C. The proposed rates from the latter points have not yet been published and are not here in issue. We are asked to pass upon

the contemplated readjustment rather than upon the rates proposed in the suspended tariffs, but it is our view that our findings and conclusions should be responsive only to the issues raised by the orders of investigation and suspension. Accordingly, the contemplated readjustment will not be further considered.

Deposits of crude barytes, or barytes ore, are found in only a few parts of the United States. The ore is dug from pits and shipped, as a rule, in box cars. It is used in the manufacture of various barium products and of paint, and for other purposes. Prior to the outbreak of the European war the greater portion of the supply was imported from Germany, the ore being sold in New York for \$6 a ton. It is said that prior to the war there was no movement of crude barytes from the producing districts to eastern points.

The crude ore is worth from \$5 to \$5.50 per ton at the point of production. Ground, pulverized, or floated barytes, hereinafter referred to as ground barytes, is made by washing and pulverizing the ore and bleaching it with sulphuric acid, after which it is washed, dried, and screened. Ground barytes is usually worth about \$12 per ton at the pits. Other products of barium, such as barium sulphate, chloride of barium, and nitrate of barium, may be obtained by subjecting the ore to other processes. These products range in value from \$20 to \$90 a ton. A plant has recently been erected at Sweetwater for the manufacture of barium products.

Early in 1915 interested parties approached respondent seeking a favorable rate adjustment on barytes. Upon investigation respondent found its rates on this commodity in an unsatisfactory condition. The rates had been built up piecemeal, with no consistent basis, and apparently without investigation to determine whether or not they were remunerative. Barytes usually moves to eastern destinations on joint through rates by way of Potomac Yard, Va. Although the service rendered by respondent is the same in all instances, the divisions which it now receives vary greatly. In some instances respondent receives less than 3 mills per ton-mile for its haul of 642 miles from Sweetwater to Potomac Yard, where the traffic is turned over to its northern connections. In most instances the tariffs provided rates on "barytes," no distinction being made between the crude ore and the manufactured product, because it was not anticipated when the rates were established that there would be any movement of the manufactured product.

These joint rates from points on respondent's line to destinations in the north are usually made by adding together the divisions which the carriers to and from the various gateways demand for their participation in the through haul. The proposed rates are constructed in this manner. Respondent first considered the ore and endeavored to reach a minimum rate on which it could be handled to points in

the east. The rates on crude barytes and on ground barytes from the Sweetwater group are the sum of respondent's divisions of 11 cents and 12 cents, respectively, and the divisions accruing to the connecting lines north of Potomac Yard or other gateway through which the traffic moves. The Baltimore & Ohio, Pennsylvania, and Philadelphia & Reading railroads each agreed to accept as its division on the ground barytes 2 cents less than the sixth-class rates, and on the ore special arbitraries which were in no case to exceed the division received for the same haul on ground barytes. The other carriers north of the gateways have demanded their full sixth-class divisions. Barytes is rated sixth class in the southern classification, which governs.

The protest was especially against the proposed rate of 19.4 cents on crude barytes to Hazard, a five-line haul via Hagerstown, Md., and three line via Potomac Yard. Prior to May 8, 1915, the rate from Sweetwater was 18.75 cents. At the request of a shipper respondent reduced it to 17.19 cents. This was made applicable only via Bristol, Tenn., and the Norfolk & Western Railway, respondent voluntarily "short hauling" itself because it considered the traffic unremunerative at that rate over the somewhat longer route through Potomac Yard. The rate of 17.19 cents was lower than to other points for comparable distances, and shortly after its publication respondent was requested by other shippers to make corresponding reductions to other destinations. This it declined to do and decided not to continue the lower rate to Hazard.

The following table shows the present and the suspended rates on crude and ground barytes from Sweetwater, Tenn., to representative destinations, with the distances and the revenue per ton-mile which would be derived from the rates under suspension:

Rates on barytes in carloads from Sweetwater, Tenn., in cents per 100 pounds.

To—	Miles. ¹	Crude barytes.			Ground barytes.		
		Present rate.	Suspended rate.	Revenue per net ton-mile under suspended rate (mills).	Present rate.	Suspended rate.	Revenue per net ton-mile under suspended rate (mills).
Easton, Pa.....	885	22.77	19.4	4.88	22.77	22.0	4.97
Grasselli, N. J.....	890	18.75	19.4	4.36	18.75	22.0	4.94
Hazard, Pa.....	921	17.19	19.4	4.21	18.75	22.0	4.78
Newport, Del.....	761	16.52	17.3	4.54	17.14	18.0	4.73
Philadelphia, Pa.....	800	16.52	17.3	4.83	17.14	22.0	4.50

¹ Via the routes used, not shortest lines, as given by respondent.

The factors north of Potomac Yard were not increased following our decision in *The Five Per Cent Case*, 32 I. C. C., 325, because

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of the carriers' delay in revising the rates in question. Part of the increase in the suspended rates is due to the inclusion of an increase of 5 per cent in the northern factors.

During the period of six months ended September 30, 1916, there were shipped from Sweetwater and Niota to what are designated by respondent as "eastern and interior eastern destinations" 296 carloads of crude barytes. The average car loading was 82,851 pounds, and the average revenue per car \$146.87. During the same period there were shipped from Sweetwater to eastern and interior eastern points 21 carloads of ground barytes. The average loading was 56,102 pounds and the average revenue \$121.12.

The suspended rates on barytes are lower than on somewhat similar commodities, such as ocher and manganese ore, from points in Tennessee to the same destinations. Ocher is worth \$9.20 and manganese ore \$11 per ton. They are relatively higher than the rates to eastern points from Chicago, Ill., and St. Louis, Mo., which are in the nature of proportional rates applying on traffic from beyond. We have observed in previous cases that transportation conditions in the territory south of the Ohio River justify somewhat higher rates than those prevailing north of the river.

The rates on crude barytes and on ground barytes bear a more or less definite relationship to those on the more valuable products of barium already mentioned. The latter are not in issue in this proceeding.

We find and conclude, upon consideration of all the evidence, that the suspended rates have been justified. The orders of suspension will be vacated as of May 1, 1917.

No. 9069.
BAY STATE MILLING COMPANY ET AL.
v.
GREAT LAKES TRANSIT CORPORATION ET AL.

Submitted January 17, 1917. Decided March 13, 1917.

1. Combination rail-lake-and-rail rates on wheat from Minneapolis to complainants' mills in southern Minnesota and southwestern Wisconsin, there milled in transit and sent forward through Milwaukee to New York and other eastern destinations, not shown to be unreasonable or unduly prejudicial.
2. Combination of local rates on wheat from country stations in the spring wheat territory to Lake Superior ports, and of rates thence, water and rail, to New York and other eastern destinations, slightly lower than the combination of local rates from same points of origin to complainants' mills and thence to Lake Michigan ports, and of rates thence, water and rail, to the same destinations, not shown to be unreasonable or unduly prejudicial to mills whose product takes the latter route.

W. M. Hopkins for complainants.

C. R. Hillyer for Chapin & Company.

Isaac H. Mayer and *Levy Mayer* for Great Lakes Transit Corporation.

O. H. Dynes and *H. E. Pierpont* for Chicago, Milwaukee & St. Paul.

W. H. Bremner for western lines.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The complainants' mills are situated in southwestern Wisconsin and southern Minnesota, generally south of an east and west line running through Minneapolis.

Two different situations are presented in this case.

(1) Upon wheat moving from Minneapolis, milled in transit at complainants' mills, and the products thereof forwarded over a rail-lake-and-rail route by the Great Lakes Transit Corporation through Lake Michigan ports—Milwaukee and Chicago—to New York a combination domestic rate of 23.8 cents per 100 pounds is applicable. It is alleged that thereby undue prejudice is created against millers in southern Minnesota and southwestern Wisconsin who ship via the route in question, for the reason that from Minneapolis to the same

destination by way of Duluth, a joint through rail-lake-and-rail domestic rate of 28 cents per 100 pounds applies on grain products and by-products.

(2) Upon wheat from country stations at and beyond the complainants' mills—situated chiefly in southern Minnesota and southwestern Wisconsin—milled in transit at the mills of the complainants and the products forwarded to Lake Michigan ports and thence lake-and-rail by the Great Lakes Transit Corporation to points in trunk line territory, the combination rates are in the majority of instances somewhat higher than the combination rates on wheat drawn from the same territory, milled at Lake Superior ports, and the product forwarded by the Great Lakes Transit Corporation to the same points in trunk line territory. It is alleged that this constitutes undue prejudice against the complainants and undue preference in favor of the millers at Lake Superior ports, Duluth, Minn., and Superior, Wis.

Though in both of the situations above outlined it is alleged that the rates involved are unreasonable *per se* in violation of section 1, the evidence, other than reference to and reliance on certain of the Commission's former findings, adduced to support this contention was essentially that lower charges are effective through Lake Superior ports.

The export rates involved were formally attacked by the complaint, but the charge as to them was abandoned.

We shall first deal with the allegations of undue prejudice, and subsequently with the allegation of unreasonableness.

Does the fact that complainants, drawing wheat from Minneapolis, milling it in transit, and forwarding the product via Lake Michigan ports, lake and rail to New York, must pay 23.8 cents per 100 pounds on domestic shipments, evidence undue prejudice as against Minneapolis competitors, who pay but 23 cents on their products via Lake Superior ports to the same destination? Does the disparity in rates cited above evidence undue prejudice against complainants in the light of the fact that hitherto their rates have been on a parity, and still remain on a parity with Minneapolis competitors if complainants' shipments traverse the lakes from Michigan ports by other boat lines than the Great Lakes Transit Corporation?

Rates on grain into the competing markets of Minneapolis, Duluth, Superior, Milwaukee, and Chicago have been before this Commission in numerous cases. Among these are *Investigation of Advances in Rates on Grain*, 21 I. C. C., 22; *Commercial Club of Superior, Wis., v. G. N. Ry. Co.*, 24 I. C. C., 96; *Superior Commercial Club v. G. N. Ry. Co.*, 25 I. C. C., 342; *Chicago-Duluth Grain Rates*, 27 I. C. C., 216; *Board of Trade of City of Chicago v. C. & A. R. R. Co.*, 27

I. C. C., 530; *Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.*, 34 I. C. C., 581; *1915 Western Rate Advance Case*, 35 I. C. C., 497, 566.

In *Chicago-Duluth Grain Rates*, 27 I. C. C., 222, in commenting upon the minor variations in rates on grain and grain products in this locality, it was said:

Experiences justify the statement that it is humanly impossible to fix any adjustment of these rates that would be acceptable to the several contending markets, and equally impossible to fix any adjustment in which those interested in those markets could find no room for criticism.

In *Board of Trade of the City of Chicago v. C. & A. R. R. Co.*, 27 I. C. C., 533, it is remarked:

Complainants insist that they should be permitted to go into the Minneapolis market, purchase wheat, and ship it out at a rate no higher than the Minneapolis miller pays as the balance of the through rate on wheat manufactured into flour and shipped to Chicago. * * * We do not believe that the function of transit should be so enlarged.

It would appear, however, that the equality of rates from Minneapolis and complainants' mills has permitted complainants, who draw at least half of their grain from Minneapolis, to place their products at points in eastern trunk line territory on a parity with their Minneapolis competitors. That the so-called western lines serving complainants' mills and transporting complainants' products to Lake Michigan ports should be willing that the former rate equality should be maintained is fairly indicative of the policy of these lines to obtain the rail haul thus involved. It is not conclusive evidence that the 0.8-cent higher rate per 100 pounds via the new lake-carrier's route creates undue prejudice against the complainants.

Moreover, in view of the fact that Minneapolis is within 150 miles of Lake Superior, whereas the complainant mills are at least twice that distance from Lake Michigan, and that the Lake Superior route offers a haul by water which both absolutely and relatively to the rail haul is longer than the water haul from Lake Michigan ports, the slightly higher rate via the latter route can hardly be adjudged unduly prejudicial to complainants.

We are not satisfied that the disparity in rates complained of results in discrimination, nor if discrimination were found, that the greater rate by Lake Michigan, which exceeds the Lake Superior rate by little over 3 per cent, can be adjudged undue.

The other situation which is said to involve undue prejudice has to do with the comparative rates from country points in the spring wheat territory to Lake Superior mills and to complainants' mills, respectively, when taken in each case with the outbound rate on the product via lake route to points in eastern trunk line territory.

It is not contended here that the combination rates were previously equal, but that a certain advantage lay with the Lake Superior mills which is so augmented by the 0.8-cent higher rate via the Great Lakes Transit Corporation's route over Lake Michigan as to issue in undue prejudice.

There are no joint through rates from the spring wheat territory—the Dakotas, Minnesota, and Iowa—on wheat shipped to Lake Superior ports and the product shipped to trunk line destinations, or when milled in transit by the complainant mills and the products forwarded to the same destinations through Lake Michigan ports. The charges are made up of local rates on wheat to Lake Michigan ports with milling in transit at the complainants' mills, plus the flour and grain products rates from these ports to destination. This is likewise true on similar movements through Duluth and Superior. The complainants introduced exhibits showing many instances where the combination on Duluth is less by varying amounts, which average about 1½ cents per 100 pounds, than the combinations through Lake Michigan ports. Lake Superior mills are alleged to be unduly favored. The Great Lakes Transit Corporation offered exhibits showing many stations from which the combination through Duluth was the same as the combination through Lake Michigan ports. The following instances taken respectively from the complainants' exhibits and those of the Great Lakes Transit Corporation illustrate the situation, taking New York as destination:

From—	Through Milwaukee.			Through Duluth.		
	West.	East.	Total.	West.	East.	Total.
Milan, Minn.....	16.2	15.5	31.7	12.6	18.0	30.6
Graceville, Minn.....	17.1	15.5	32.6	13.1	18.0	31.1

From—	To Minneapolis.	Minneapolis to New York.	Total.	To Duluth.	Duluth to New York.	Total.
Redwood Falls, Minn.....	8.6	23.0	31.6	13.6	18.0	31.6

Comparative distances were not shown in connection with the many examples of combinations on Duluth and Milwaukee adduced; and this situation in which undue prejudice is alleged was not stressed by the complainants, at least with the same insistence as the situation first discussed.

It would further appear that little grain would move through the points where complainants' mills are situated to Minneapolis, Duluth, or Superior, inasmuch as the short or direct line would not lie in that direction. That total rates may be slightly higher per 100

pounds via complainants' mills falls short of establishing that the rate relationship even as altered by the 0.8-cent addition over the route of the new lake line carrier is unduly prejudicial to complainants.

We are of opinion and find that the allegation of undue prejudice or disadvantage has not been established.

The second issue, that of the reasonableness *per se* of the increased through rate, involves a novel issue relating to the burden of proof under section 15 of the act to regulate commerce. Before discussing that issue a recital of the history of the Great Lakes Transit Corporation and an analysis of the rate instituted by that carrier will prove of service.

Over the rail-lake-and-rail routes operated by rail carriers formerly owning boat lines there were joint through rates on grain and grain products, domestic, from Minneapolis to trunk line territory, of which New York will be taken as typical, both through Lake Michigan and Lake Superior ports, and these rates were the same—23 cents per 100 pounds. Subsequent to the divorcement of the lake lines from their rail owners under the Panama Canal act there was incorporated on March 22, 1916, the Great Lakes Transit Corporation to carry freight and passengers between eastern and western lake ports. This new corporation began with a capital of \$3,000,000 of preferred stock, a common-stock issue of no par value, and bonds outstanding to the amount of \$3,400,000. It forthwith purchased from the boat lines theretofore operated by the railroads 33 boats, and in payment gave 40 per cent in cash and 60 per cent in bonds of the new corporation or notes secured by mortgage.

An investigation of the revenue of the old boat lines accruing from Lake Michigan eastbound traffic inclined the officials of this new lake carrier against undertaking operation on Lake Michigan, but they were at length reluctantly induced to do so in the expectation that operation from these ports might be made to show a profit under a rate schedule different from that of the old boat lines. Consequently, the Great Lakes Transit Corporation filed in its first tariff in connection with the rail carriers east of Buffalo, a rate on grain and grain products, domestic, from Milwaukee and Chicago to New York of 15.5 cents per 100 pounds applicable from its docks, not undertaking to be a party to any joint through rate from Minneapolis via Lake Michigan ports. However, it did join in a joint through rate of 23 cents per 100 pounds to New York on grain products, domestic, from Minneapolis through Lake Superior ports.

The complainant mills in many instances draw more than half their grain for milling from Minneapolis and are in competition

with mills in Minneapolis and Lake Superior ports. The proportional rate on grain milled in transit from Minneapolis to Milwaukee or Chicago and consigned to New York and points in eastern trunk line territory is 8.3 cents; so that the complainants have to pay upon this grain from Minneapolis to their mills, there milled, and the product forwarded through Milwaukee via the Great Lakes Transit Corporation, to New York, 8.3 cents to Milwaukee, plus 15.5 cents from Milwaukee to New York, or 0.8 of a cent more than their competitors at Minneapolis, where these competitors ship from Minneapolis through Duluth to New York; whereas, before the dissolution of the railroad boat lines both complainants and their Minneapolis competitors could ship on a joint through rate of 23 cents.

The distances over the lakes between Milwaukee and Buffalo and Duluth and Buffalo may be roughly taken to be 820 miles and 1,000 miles, respectively, while the haul from Minneapolis to Duluth is 160 miles by the Great Northern as compared with that of 336 miles from Minneapolis to Milwaukee via the Chicago & North Western. The proportional rate of 8.3 cents to Milwaukee yields to the carrier a ton-mile revenue, considering the short-line mileage alone, of 4.94 mills; and included in this rate is a milling-in-transit service. Out of the 15.5-cent rate the Great Lakes Transit Corporation receives as its division 5.8 cents and the carrier east of Buffalo 9.7 cents, which is the same division the eastern carriers receive upon all-rail business. The Canada Atlantic boat line and the Lehigh Valley Railroad boat line publish a joint domestic rate of 14.7 cents on grain products from Milwaukee to New York. The Lehigh Valley's boat line also joins in a joint through rate of 23 cents from Minneapolis through Milwaukee to certain points reached by its connections. The 8.3-cent proportional rate to Milwaukee is not applicable when the grain moves over the Lehigh Valley boat line; but, since the 23-cent joint through rate is published via this line, this is of no consequence. This 14.7-cent rate and the joint 23-cent rate via the Lehigh Valley boat line the complainants do not attack. Out of the 23-cent rate from Minneapolis through Duluth the rail carrier receives 5.4 cents, the Great Lakes Transit Corporation 8.3 cents, and the rail lines east of Buffalo 9.3 cents. This 5.4-cent division yields for the short line ton-mile earnings of 6.7 mills.

The short-line distance from Buffalo to New York is 411 miles, via Delaware, Lackawanna & Western. Deducting 3.2 cents from the division of the lines east of Buffalo allowed by the carriers for terminal service, including lighterage at New York, out of the 9.7-cent division of the 15.5-cent rate there is left 6.5 cents for the road haul; and out of the 9.3 cents, the division of the 23-cent rate, 6.1 cents.

The ton-mile earnings for the short-line distance for these divisions are 3.13 and 2.96 mills, respectively. Taking the distance over the lakes between Duluth and Buffalo as 1,000 miles, and the distance between Milwaukee and Buffalo as 820 miles, the 8.3-cent division accruing to the Great Lakes Transit Corporation for the haul from Duluth yields ton-mile earnings of 1.6 mills, and the 5.8-cent division for its haul from Milwaukee yields 1.4 mills. So that the ton-mile yield of the divisions of the rates applicable through Duluth and through Milwaukee are as follows:

	Division.	Revenue per ton- mile.		Division.	Revenue per ton- mile.
Under 23-cent joint through rate via Duluth:	<i>Cents.</i>	<i>Mills.</i>	Under combination via Mil- waukee:	<i>Cents.</i>	<i>Mills.</i>
Minneapolis to Duluth...	5.4	6.7	Minneapolis to Milwaukee	8.3	4.94
Duluth to Buffalo.....	18.3	1.66	Milwaukee to Buffalo.....	15.8	1.41
Buffalo to New York.....	16.1	2.96	Buffalo to New York	16.5	3.16
Terminal service, includ- ing lighterage New York.....	3.2	.....	Terminal service, includ- ing lighterage New York.....	3.2	.....

¹ Via Great Lakes Transit Corporation.

² For road haul.

It will be remarked that the ton-mile earning for the rail-line hauls is low; that the complainants concede the 8.3-cent proportional rate from Minneapolis to Milwaukee, including the transit service, to be reasonable, and that this yields for the short-line distance a ton-mile earning greater than that from the division for the road haul received by the lines east of Buffalo; that the Great Lakes Transit Corporation receives a slightly greater ton-mile earning under the rate through Duluth than on that through Milwaukee.

The present through charges via the Great Lakes Transit Corporation from Minneapolis through Lake Michigan ports to New York of 23.8 cents are 2 cents under the all-rail rate, which is 25.8 cents. This all-rail rate is divided, 8.3 cents to lines west of Chicago, 7.8 cents to lines from Chicago to Buffalo, and 9.7 cents to lines from Buffalo to New York. The local rate on grain products, including flour from Buffalo to New York, is 11.6 cents, which is 1.9 cents greater in amount than the eastern lines obtain in division out of the through rate of 15.8 cents from Michigan ports.

While it is true that the rail lines east of Buffalo made no appearance at the hearing and offered no defense of their divisions, the analysis of ton-mile earnings for the road haul under the divisions of the through rate would not tend to show that it was undue or unreasonable.

The Great Lakes Transit Corporation offered testimony to prove the high level of various costs incurred by it in 1916 in the operation of its fleet. Costs of operation materially increased in 1916 over the

previous years. A witness for the Great Lakes Transit Corporation testified that up to September 30, 1916, fuel cost approximately 25 cents a ton more than in 1915, and at that it was hard to obtain. Food supplies, which represent over 8 per cent of the total daily cost of operating the boats, increased about 40 per cent in price. In 1915 the average cost per meal for crews was 15 cents; in 1916 it was over 21 cents. The increased price of iron and steel articles is notorious. Towing charges have increased nearly 10 per cent, wharf labor which in Buffalo in 1915 was paid 25 cents an hour during 1916 received 30 to 35 cents per hour. Stevedores in 1916 received over 12 per cent more than they did in 1915. Because of the increased price of flour, whenever loss and damage may occur, the claim amounts to more than formerly by over 30 per cent. In 1915 a boat of 4,500 tons carried 27 men, in 1916, 31 men, to provide for the eight-hour day in some departments and the nine-hour day in all departments.

The initial expense of starting a new business is not inconsiderable; no longer was there a treasury of a rail carrier to pay possible losses incurred, nor could the active help of the rail carriers, who formerly owned the boat lines, be expected in soliciting business for the Great Lakes Transit Corporation.

The Great Lakes Transit Corporation introduced revenue evidence which purports to show that this grain traffic from Lake Michigan ports is not profitable under the present rates. From exhibits filed the net earnings from the opening of navigation to September 30, 1916, appear as \$2,585.98. That there are infirmities in these financial exhibits of this respondent are apparent. It is assumed by the Great Lakes Transit Corporation that the expenses eastbound can be segregated from those westbound, and that low-grade eastbound traffic should pay the same percentage of interest on the investment as the higher grade westbound traffic. However, these exhibits tend to show at least that under the present rates this grain traffic is not unduly profitable to the lake carrier.

Even if it be conceded that the evidence of record may fall short of demonstrating affirmatively that the rate of 15.5 cents is just and reasonable, the question arises where in this proceeding the burden of proof actually lies.

Section 15 of the act to regulate commerce provides:

At any hearing involving a rate increased after January 1, 1910, or of a rate sought to be increased after the passage of this act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier. * * *

Is this to be construed, as a general rule of evidence, that rates higher than those in effect on January 1, 1910, are to be presumed unreasonable so as to require rebuttal of the presumption? Or is the

clause simply not applicable to the initial rate of a carrier which has come into existence subsequent to the date in question?

In case a new railroad line were built between two points, A and B, between which other rail lines had long been operating, is an obligation cast on the new carrier to carry the same rate from A to B as is carried by the older lines? We do not think this can fairly be assumed to be the case. The new carrier might choose to observe the fourth section, for example, which the older lines may not have done, and thus might have warrant for carrying a different and a higher terminal rate. Manifestly, in the case supposed, it could make not the slightest difference that the new carrier had purchased or used equipment which had been used by the older lines.

On the other hand, if we suppose a railroad had gone into the hands of a receiver, and that as the outcome a new corporate style or title had been assumed to distinguish the new corporation technically from its predecessor, it might well be argued that the new company, new in name only, succeeded to the obligations of its predecessor so far as the shipping public is concerned, and could not increase rates without justifying them under the requirement of section 15. If the new company were, of necessity, compelled to operate over the same physical route or routes as its predecessor, and were bound to serve the same shipping communities and to carry the same traffic, it would indeed be unreasonable to hold that it could escape the obligation to carry the same rates unless it sustained the burden of proving higher rates to be just and reasonable.

The case of the Great Lakes Transit Corporation differs essentially from the situation last discussed. Its origin was due to the enforced cessation of steamer operation by owning carriers, and the Great Lakes Transit Corporation emerged as a new creation independent of carrier control. Not only had there been a complete change in ownership from the former rail ownership of previous boat lines; but, of even greater importance, the new lake carrier was under no obligation to operate the same routes or carry the same traffic or serve the same communities as its so-called predecessors. Had the Great Lakes Transit Corporation chosen never to operate over Lake Michigan it is difficult to see how it would have violated any obligation incumbent upon it. Its routes were all before it to choose, and if it finally determined to serve certain Lake Michigan ports, and to omit other ports of call on the same lake, it was clearly within its rights. As a matter of fact, the new lake line put 27 of its boats into the Lake Superior service and but 6 into the Lake Michigan service; and its route in the latter case did not include Manitowoc as a port of call, although this port was included in the routes of certain of the former boat lines. Under

such circumstances when this carrier filed its tariffs, the rates therein were not rates increased since January 1, 1910. The rates were initial rates, not increased rates, and do not fall within the purview or intent of the aforesaid clause of the statute.

Nor does it follow because the initial tariff filed by the Great Lakes Transit Corporation included joint rates with rail carriers, party theretofore with other lake carriers to lower rates between the same ports, that the concurrence of the rail carriers suffices to bring the new and higher joint rates under the requirements of the clause of section 15. The exemption therefrom attaching to rates filed by the lake carrier alone would attach to the joint rates in question. Otherwise a new instrumentality of water commerce can not file in the first instance joint rates with rail connections without subjecting itself to limitations not of its own making but which, it is argued, it must inherit from predecessors whose domination by rail owners was supposed to account for their ill success as public servants.

One of the great purposes of the Panama Canal act was to create independent shipping companies operating over water routes. It would be a singular impediment to impose on such companies, if as a condition precedent to their beginning operation they should be required to saddle themselves with joint rates and divisions imposed involuntarily upon predecessor lines, and with a view primarily of serving the ends of their railroad owners.

For the reasons above outlined we incline to the view that the statute does not cast the burden of proving the reasonableness of the rates here in issue upon the Great Lakes Transit Corporation; and also to the view that it is by no means certain that the statute casts that burden upon the rail carriers concurring in the joint rates here under attack. If the 15.5-cent rate is inherently unjust and unreasonable, it is not so shown upon the record before us.

It has been shown that the rail rates up to Lake Michigan ports are the same as the carriers formerly received in division out of the joint 23-cent rate; that previous to the advent of the Great Lakes Transit Corporation, the old carrier-owned boat lines joined in a rate of 23 cents from Minneapolis to New York; that when the Great Lakes Transit Corporation began operation it joined with the eastern lines in publishing a joint rate of 15.5 cents on the commodities here involved from Lake Michigan ports—the first rate it ever published—and that it never joined in any joint rate from Minneapolis via Lake Michigan ports because it could not obtain sufficient revenue; that the division of the carriers east of Buffalo—9.7 cents—is the same as they receive out of the all-rail rate, which is less than their local rate from Buffalo to New York on the same commodities; and that since out of this division a charge of

3.2 cents is allowed for terminal service and lighterage there remains but 6.5 cents for the road haul; that the present through charges through Lake Michigan ports are less than the all-rail rate by the same amount that they were before the 5 per cent increase in the all-rail rate; that there has been a complete change in the conditions of marine navigation, such as an enhancement in the physical value of ships and a material increase in the costs of operation of the boat lines; and finally that operating costs and physical values of marine equipment have greatly increased since 1914.

In *Lumber Transit Privileges at Buffalo, N. Y.*, 33 I. C. C., 601, at page 605, it is said:

An increase in rates can not be justified on the ground that a particular carrier, which transports shipments over only a comparatively small portion of the entire through route, receives an unsatisfactory division of the joint rate.

This was cited with approval in *Grain from Manitowoc, Wis.*, 37 I. C. C., 549.

In the present case, although the Great Lakes Transit Corporation and the western lines produced the evidence, it can not be said that no evidence is present as to the portion of the joint rate east of Buffalo. The divisions of the eastern lines appeared, also the amount allowed for terminal service and lighterage and a comparison of the division with the local rate between Buffalo and New York. In short, as to all the factors of the joint rate, there was evidence—by whom produced is immaterial. In *Port Huron & Duluth S. S. Co. v. P. R. R. Co.*, 35 I. C. C., 475, decided July 26, 1915, an independent lake carrier asked the establishment of through routes and joint rates between points in trunk line territory and Duluth, Minn, Superior, Wis., and points west thereof by way of the complainant line from Port Huron, Mich., to Duluth and Superior. The Commission ordered these through routes and joint rates to be established via the complainant line from and to the points in trunk line territory on the Pennsylvania Railroad and certain Canadian points, not to exceed the rates then in effect between the same points via other rail-and-lake and rail-lake-and-rail routes. The carriers were unable to agree as to the divisions, and in *Port Huron & Duluth S. S. Co. v. P. R. R. Co.*, 40 I. C. C., 335, the Commission prescribed divisions. Eighty per cent of the petitioner's eastbound tonnage consisted of grain products, and the 23-cent rate on these commodities from Minneapolis was there used as representative. The division of this 23-cent rate was fixed as follows: The share of the western lines was not to exceed 5 cents. The division of the Pennsylvania was not to exceed 9.2 cents—the division which that carrier received out of the all-rail reshipping rate from Chicago to New York prior to the 5 per cent

increase on traffic interchanged with the Grand Trunk at Black Rock. At page 345 it was said:

A corresponding increase was found not justified in *Rates via Lake-and-Rail Routes*, 87 I. C. C., 302, and in consequence the division of the lake-and-rail rates should not include a proportion of all-rail increases. The maximum division thus formed includes a terminal deduction to the Pennsylvania in accordance with the recognized practice of the carriers in division of through rates to and from eastern territory.

The balance of the through rate, 8.8 cents, was divided by a mileage prorate between Port Huron & Duluth Steamship Company and the Grand Trunk, which gave the water carrier 5.6 cents and the Grand Trunk 3.2 cents. This case, however, has been reopened, and it must be remembered that the 9.2 cents accorded as a division for the rail haul east of Black Rock was a share of a rate of 23 cents, whereas the total rate in this case is 23.8 cents.

The action of the Commission in the present case can in no sense be taken as a final approval of the existing divisions of the 15.5-cent rate from Milwaukee to New York, nor do we pass upon the question whether or not the eastern lines are entitled to 9.7 cents as their division.

We are of opinion and find that the present charges upon grain and grain products from Minneapolis through Lake Michigan ports have not been affirmatively shown of record to be intrinsically unjust and unreasonable; and that no undue prejudice has been shown to exist against the complainants because of the combination of rates from country stations through Duluth to New York differing in instances from the combination from the same stations through Lake Michigan ports. The complaint will be dismissed.

McCHORD, Commissioner, dissenting:

I am unable to agree with the majority report in this case, and because of the importance of the principle adopted I shall briefly state the grounds of my nonconcurrence.

For many years prior to 1898 the rates on flour via the lake-and-rail lines from Lake Michigan to points east of Buffalo fluctuated between 2 and 12 cents under the all-rail rates, but this differential was generally 5 cents per 100 pounds. In 1898 the rail lines secured control of most of the lake lines, and such control was followed by an increase in the lake-and-rail rates, the differential being reduced to 3 cents. This rail-line control over the boat lines having become complete in 1902, the differential was further narrowed and became 2 cents. *Rates via Rail-and-Lake Routes*, 87 I. C. C., 302, 307.

In *The Five Per Cent Case*, 81 I. C. C., 351; 82 I. C. C., 325, we permitted an increase in the all-rail rates but denied any increase in
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the rates lake and rail. This resulted in a differential of 2.8 cents. A further but unsuccessful effort was made to increase the lake-and-rail rates. *Rates via Rail-and-Lake Routes, supra.* This decision was rendered December 30, 1915, and on March 22, 1916, but a few months thereafter, the Great Lakes Transit Corporation was chartered and became the purchaser of the larger number of the lake boats formerly owned and operated by the rail carriers. This corporation voluntarily entering the service of lake transportation and placing itself within the jurisdiction of this Commission, published rates from Lake Michigan ports to destinations on rail lines east of Buffalo 0.8 cent higher than the rates which we had twice held could not be increased, thus reducing the differential to the old noncompetitive figure of 2 cents. Of this increase, testified to have been made for the benefit of the boat line, 0.5 cent, more than half, was taken by the rail lines east of Buffalo. To this extent such rail lines receive higher divisions on the rates here involved than were prescribed for the same service. *Port Huron & Duluth S. S. Co. v. U. P. R. R. Co.*, 40 I. C. C., 335. Such division is higher by 0.4 cent than such rail lines voluntarily agree to for the same service on shipments from Lake Superior ports.

In the majority opinion the combination rate of 23.8 cents, made by a proportional rate of 8.3 cents from Minneapolis to the lake and 15.5 cents lake and rail to New York, is shown to yield per ton-mile the following: To the western carriers, 4.94 mills; to the Great Lakes Transit Corporation, 1.41 mills; and to the rail lines east, 3.16 mills. These figures ignore the facts that the western lines perform both a transit and terminal service under their proportional rate, which they voluntarily published; that such rate applies also to Chicago, on which haul the earnings are 4.07 mills; and that water mileage is never regarded as entitled to earn the same revenue per ton-mile as rail mileage. The allowance of 3.2 cents for lighterage at New York is excluded by the majority from the earnings of the eastern lines, although such allowance has recently been increased and no testimony was offered of its reasonableness, and such allowance is not paid at interior points to which much of the traffic moves. If the switching charges at Milwaukee or Chicago, which have not been increased since January 1, 1910, and a fair compensation for the transit service performed at the intermediate mill be deducted from the proportional rate of 8.3 cents, it will be seen that the earnings of the western lines are less than the majority accord to the eastern lines. This the majority do, notwithstanding the eastern lines present no testimony whatsoever.

I need not further discuss the statements of fact contained in the majority report, because the conclusion of the majority is not founded

on testimony, but results from the legal opinion that the burden of proof rests upon the complainants. The majority rely on a finding that there is a lack of evidence. They say:

That the present charges upon grain and grain products from Minneapolis through Lake Michigan ports have *not been affirmatively shown* of record to be intrinsically unjust and unreasonable.

To arrive at this conclusion, the majority necessarily construed the act of June 18, 1910, placing on carriers "the burden of proof to show that the increased rate * * * is just and reasonable," as having no application to a joint through rate part of which is paid to a carrier which had not theretofore published any rate.

The majority, arguing from the analogy of a newly built rail line and a rail line that had changed ownership through a receivership in a court of equity, arrive at the conclusion that the burden of proof would apply in the second but not in the first situation. Neither of the examples used is analogous to the instant case, but the second is more nearly so than the first. It can make no difference whether title passed by voluntary or involuntary sale. The purchaser is a voluntary purchaser in either event.

The history of the act to regulate commerce shows a legislative intention to supply means by which shippers may obtain a determination of the question of the justness of the rates which they are compelled by force of circumstances to pay. The facts pertinent to this issue are better known to the carrier than to the shipper, and many of such facts are unobtainable by the average shipper except at an expense which is practically prohibitive. This reason for the statutory rule applies equally to all common carriers, and it is significant that Congress used "a rate increased" and not "a carrier who increased or proposed to increase rates."

In 1915 there was a rate of 14.7 cents from Chicago and Milwaukee to New York, via the lakes to Buffalo, thence by rail. By the same route, and possibly in the same boats and the same cars, this rate in 1916 was 15.5 cents. The only change in the instrumentalities was one wholly irrelevant to the cost or value of the transportation service, it being immaterial who owned the instrumentality. Can it be the law that the application of an act of Congress may be avoided by a change in the ownership of a facility of commerce? I do not think so.

Courts and this Commission have frequently referred to the fact that equality in rates was the fundamental purpose of the act to regulate commerce. If the opinion of the majority be the law, we shall see on the same state of facts a finding that the Lehigh Valley Transportation Company, having continued the ownership of its

boats, may not increase its rates; while the ownership of its rival boats having changed, the charges for the use of such boats may be increased. I can not believe that Congress ever intended to produce such an anomaly.

The decision of the majority goes further and relieves from any burden the eastern rail lines who demanded and received the greater part of the increase. If this be the law, all joint rail-and-water rates may be increased merely by organizing a new boat line to operate over the water part of the route; and such increase will have to be sustained unless and until a shipper can affirmatively show the increased rate "to be intrinsically unjust and unreasonable."

HALL, Commissioner, dissenting:

For reasons sufficiently indicated in the dissenting memorandum of **COMMISSIONER McCHORD**, I am unable to agree with the majority report.

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No. 9071.
DOLAN FRUIT COMPANY ET AL.
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.

Submitted January 22, 1917. Decided March 13, 1917.

Rates on bananas in carloads from New Orleans, La., and other Gulf ports to Grand Island and Hastings, Nebr., found unreasonable. Reasonable maximum rates prescribed and reparation awarded.

William H. Young for complainants.

H. A. Scandrett, K. F. Burgess, C. B. Matthai, H. H. Holcomb, and L. T. Wilcox for defendants.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

By complaint, filed July 31, 1916, the Dolan Fruit Company and the Brown Fruit Company, corporations engaged in the wholesale fruit and vegetable business at Grand Island, Nebr., and L. A. Kinney & Company, a copartnership engaged in like business at Hastings, Nebr., allege that the rates on bananas, in carloads, from New Orleans, La., Mobile, Ala., and Galveston, Tex., to Grand Island and Hastings are unreasonable and unjustly discriminatory. Reparation is asked on all shipments which moved within two years prior to the filing of complaint.

Grand Island is a division terminal on the main line of the Union Pacific, 144 miles southwest of Omaha, 277 miles and 238 miles northwest of Kansas City and St. Joseph, Mo., respectively, and 92 miles west of Lincoln, Nebr. It is the northern terminus of the St. Joseph & Grand Island Railway and also is on the line of the Chicago, Burlington & Quincy Railroad extending from Lincoln to Billings, Mont. It has a population of about 14,000. Hastings, about 25 miles south of Grand Island, is on the main lines of the Chicago, Burlington & Quincy and the St. Joseph & Grand Island, being a division terminal of the former road. It is reached by branch lines of the Missouri Pacific, the Union Pacific, and the Chicago & North Western railways, and has a population of about 12,000. The distances from Kansas City, St. Joseph, Omaha, and

Lincoln to Hastings are approximately the same as those to Grand Island. During the year 1915 complainants received 130 carloads of bananas at Grand Island and 38 carloads at Hastings. Shipments move to both points via Kansas City or St. Joseph.

Rates on bananas from the Gulf ports to Kansas and Nebraska points bear a fixed relationship to the rates from New Orleans. Rates from Mobile are the same as those from New Orleans, and from Galveston to Grand Island and Hastings they are 10 cents less than the rate from New Orleans. Throughout the record and herein rates from New Orleans are referred to as representative and are stated in cents per 100 pounds.

Bananas in carloads are rated third class in the western classification and move to the Missouri River cities, to Lincoln, and to many other points, under third-class rates.

The general basis for making rates to points west of Lincoln is the combination of the inbound and the outbound rates from Missouri River cities or Lincoln, but rates on bananas are an exception to the general basis. The third-class rate from Lincoln to Grand Island and Hastings is 28.7 cents, whereas the rate on bananas to Grand Island and Hastings is but 19 cents higher than that to Lincoln.

The record does not clearly show what considerations originally entered into the establishment of rates on bananas to Grand Island and Hastings. Complainants assume that when the rate to Topeka, Kans., was made 19 cents over that to Kansas City the rates to Grand Island and Hastings were made the same differential over that to Lincoln. They contend, therefore, that when later the rate to Topeka was reduced to 8 cents over that to Kansas City the rates to Grand Island and Hastings should have been similarly readjusted in relation to the rate to Lincoln. Defendants contend, however, citing *Topeka Traffic Association v. A. & V. Ry. Co.*, 27 I. C. C., 428, that the conditions surrounding the making of rates to points in Kansas are materially different from those which obtain with respect to points in Nebraska and that there is no established relationship between the Topeka differential over Kansas City and the Hastings and Grand Island differentials over Lincoln.

The following table shows the rates on bananas in carloads from New Orleans to various destinations, the earnings per ton-mile in mills and per car-mile in cents, the distances in miles and the percentages which the rates on bananas bear to the third-class rates to the same points:

To—	Dis- tance.	Rate.	Per ton- mile.	Per car- mile.	Percent- age of class rate.
Kansas City, Mo.....	880	65	14.7	15.4	100
St. Joseph, Mo.....	942	65	13.8	14.5	100
Omaha, Nebr.....	1,079	69	12.8	13.4	100
Sioux City, Iowa.....	1,171	69	11.8	12.4	94
Lincoln, Nebr.....	1,087	73	13.4	14.1	100
Fremont, Nebr.....	1,118	73	13.1	13.8	100
Crawford, Nebr.....	1,508	110	14.6	15.3	78.9
Denver, Colo.....	1,848	95	14.1	14.8	76
Hastings, Nebr.....	1,184	92	15.5	16.3	91
Grand Island, Nebr.....	1,183	92	15.5	16.3	90
Hutchinson, Kans.....	1,009	73	14.4	15.1	70
Wichita, Kans.....	961	73	15.2	15.9	70

The car-mile earnings are based on a weight of 21,000 pounds per car, approximately the average weight of complainants' shipments. The earnings per ton-mile and per car-mile on shipments to Grand Island and Hastings are higher, it will be noted, than those on similar traffic to any other important point in the same general territory. The distances shown are those over the usual routes of movement and except to Hutchinson and Wichita are substantially the same as those over the short lines.

There are no special services rendered by defendants north of Kansas City or St. Joseph or west of Lincoln on shipments of bananas to Grand Island and Hastings, and the service as a whole is not substantially different from that performed in the transportation of similar traffic to Topeka, Beatrice, and Lincoln. Complainants assert that the average hauls from New Orleans to Hastings and Grand Island are 67 miles and 79 miles, respectively, greater than the average haul to Lincoln, and contend that the differential of 19 cents over Lincoln which yields about 5 cents per ton-mile for the additional average hauls is unreasonable.

In support of their contention that the rates attacked are unreasonable, complainants refer to the rates to Topeka, Hutchinson, Wichita, Lincoln, and Beatrice approved by this Commission in *Topeka Traffic Association v. A. & V. Ry. Co.*, *supra*; *Rates on Bananas from Gulf Ports*, 30 I. C. C., 510; *Rates on Tropical Fruits from Gulf Ports*, 30 I. C. C., 621; to the voluntary reduction from 125 cents to 110 cents, effective December 1, 1915, of the rate from New Orleans to Crawford; and to the voluntary establishment and the long continued maintenance of rates to Omaha, Kansas City, Sioux City, and Fremont, substantially on the same basis as the present rates. They assert a presumption that those rates are reasonable, and contend that there are no traffic or transportation conditions which warrant a higher basis of rates to Grand Island and Hastings than that in effect to other important points in the same general territory.

In *Rates on Tropical Fruits from Gulf Ports, supra*, we said:

Bananas in western classification, which applies on this traffic, are classified as third class in carloads. The mileage scales of these carriers indicate that for distances of 500 miles and over the spread in the third-class rates for additional distances of 25 miles is generally not more than 2 cents per 100 pounds, and in some cases it is less.

If this basis were observed, the rates to Grand Island and Hastings would be from 4½ cents to 6 cents higher than to Lincoln, and 16½ cents, 15 cents, 12 cents, and 9 cents higher than to Kansas City, St. Joseph, Topeka, and Omaha, respectively. Complainants contend that 82 cents to Grand Island and Hastings would be a reasonable rate, considering the additional service as compared with shipments to Lincoln or to the other points mentioned.

Denver was mentioned at the hearing as a competitive point, but the complaint does not allege that the rates to Denver are unduly preferential and defendants' objection to the introduction of testimony concerning undue preference and prejudice as between Denver and the complaining cities must be sustained.

With respect to the higher per ton-mile and per car-mile earnings on bananas to Grand Island and Hastings than to Kansas City, Omaha, and Lincoln, defendants assert that abnormal conditions have forced down the rates to the latter points, and that when rates are uninfluenced by the conditions existing at the Missouri River the principle that the yield per ton-mile should decrease as the distance increases is reflected in the present adjustment, as evidenced by comparison of the rates to Crawford with those to Grand Island and Hastings. Defendants insist that as the rate to the latter points is lower than the third-class rate it can not be held unreasonable.

Rates from Crawford to points in Nebraska are on a lower basis than the rates from Grand Island, Hastings, Lincoln, or Omaha. This condition, defendants assert, results from our decision in the *Missouri River-Nebraska Cases*, 40 I. C. C., 201, in which rates were not prescribed from Crawford, but were prescribed from the other points. Rates from Crawford are still based on the lower class-rate scale of the Nebraska commission known as general order No. 19. Defendants further urge that complainants' comparisons of the rates to Omaha and Lincoln with those to Grand Island and Hastings are unfair. They rely on *Grand Island Commercial Club v. N. Y. C. & H. R. R. R. Co.*, 42 I. C. C., 401, in which, after quoting the following from *City of Crawford v. C. & N. W. Ry. Co.*, 25 I. C. C., 259,

The comparison to Lincoln we do not consider entirely fair because of the construction of rates to that point with reference to the Kansas City and Omaha rates. • • • Of course there is the haul of an additional carrier

necessary to reach Crawford, and the volume of traffic to that point can scarcely be compared with the heavy tonnage to Kansas City and to Lincoln.

we added:

The same objections apply to a comparison of the rates to Grand Island and Hastings with the rates to Omaha and Lincoln.

In the *Grand Island Commercial Club Case*, *supra*, we considered the question of whether rates on a large number of commodities, not including bananas, from points east of the Mississippi River and from the south were unreasonable or unjustly discriminatory as compared with rates contemporaneously maintained to Missouri River crossings. We found that the allegations of unreasonableness and unjust discrimination had not been sustained. In *Rates on Bananas from Gulf Ports*, *supra*, decided June 8, 1914, in discussing the rate of 71 cents then in effect to Lincoln and Beatrice as compared with the rate of 80 cents to Topeka, we said:

As stated in the first part of this report, carriers' evidence has been directed chiefly in support of their contention that the present rate to Topeka is reasonable, but there is no evidence of record nor do carriers seriously contend that the present rates to Lincoln and Beatrice are unremunerative. Indeed, considering that traffic has moved for over 20 years on the present rates, and that no changed circumstances and conditions are shown or even urged, we do not think that they are in a position to contend that the Lincoln and Beatrice rates are unreasonably low.

This record shows that there has been no diminution in the volume of traffic and for many years no change in the methods of handling it south of Kansas City. Shipments for Grand Island and Hastings are moved in the same trains to Kansas City as are shipments for Topeka, Omaha, Lincoln, Beatrice, and Crawford.

The average short-line distance to Grand Island and Hastings from New Orleans is 1,178 miles; that to Lincoln is 1,087 miles, a difference of 86 miles. Manifestly if, as found in *Rates on Bananas from Gulf Ports*, *supra*, the rate of 71 cents to Lincoln then in effect was not unduly low, the rate of 92 cents then in effect to Grand Island and Hastings, points but 86 miles farther from New Orleans than is Lincoln, could not have been reasonable, differences in service and other conditions considered. It follows that if the present rate of 78 cents to Lincoln is reasonable, and there is no contention by defendants that it is not, the rate of 92 cents to Grand Island and Hastings is excessive.

In *Concordia Commercial Club v. A., T. & S. F. Ry. Co.*, 39 I. C. C., 675, we considered rates on bananas from New Orleans to Concordia, Kans. Concordia is 1,018 miles from New Orleans, and the 90-cent rate attacked was 2 cents less than the rates then and now in effect to Grand Island and Hastings. The rate to Salina, Kans., 33 miles

less distant from New Orleans than is Concordia, was 78 cents. We found that a reasonable rate to Concordia should not exceed the rate to Salina by more than 7 cents.

Upon all of the facts of record we are of opinion and find that the rates attacked were, are, and for the future will be unreasonable to the extent that they exceeded and exceed 84 cents from New Orleans and Mobile and 74 cents from Galveston. An order will be entered accordingly.

We further find that since July 31, 1914, complainants paid and bore charges on shipments of bananas described in the record, based on rates of 90 and 92 cents per 100 pounds, from New Orleans and Mobile and on rates of 80 and 82 cents per 100 pounds from Galveston; that they have been damaged in amounts represented by the differences between the amounts they did pay and the amounts which they should have paid had the rates herein found reasonable been in effect; and that they are entitled to reparation, with interest. Complainants should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 891.
GRAIN AND GRAIN PRODUCTS FROM ARGO, ILL.

Submitted January 17, 1917. Decided March 13, 1917.

Proposed cancellation of joint through rail-lake-and-rail commodity rates on products and by-products of grain from Argo, Ill., to various destinations east of Buffalo not justified, except with reference to glucose.

F. H. Towner for respondents.

James Jeffery for protestant.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The tariff here involved, supplement 29 to Chicago & Alton Railroad Company's tariff I. C. C. A-362, which has been suspended until May 29, 1917, proposes to cancel joint through rail-lake-and-rail rates on products and by-products of grain via the Chicago & Alton from Argo, Ill., to points east of Buffalo. If permitted to go into effect, the charges from Argo would be a combination of the charges to the dock plus joint through rates therefrom. These charges to the dock were formerly \$11 a car and were absorbed by the lake-and-rail carriers. The sole protestant, the Board of Trade of the city of Chicago, alleges that the charges resulting from the proposed cancellation would be in violation of sections 1, 3, and 4.

This \$11 charge above referred to was made up of the rate of the Chicago & Alton Railroad Company of 1 cent per 100 pounds, minimum 60,000 pounds (item 125, C. & A. tariff I. C. C. A-851), from Argo to the point of connection of the Chicago & Alton with the Chicago River & Indiana Railroad, and the latter's charge of \$5 per car, regardless of weight, from that point to the dock.

This \$11 charge is paid in the first instance to the rail carriers moving the shipment to the dock by the Lehigh Valley Transportation Company, but that carrier is partly reimbursed by its rail connections east of Buffalo. This implies that the increased charge upon Argo shippers which would result from the cancellation of this supplement would augment the revenue, not only of the Lehigh Valley Transportation Company but also of its rail connections east of Buffalo. Where the effect of a proposed cancellation is equivalent to increasing the total charge for transportation, and where that charge has been in effect prior to January 1, 1910, the carriers responsible for the proposed increased rates are required to show the proposed increased rates just and reasonable. The Chicago & Alton

in this instance canceled the supplement at the instance of the Lehigh Valley Transportation Company, and averred that the Chicago & Alton had no interest in the matter except to obtain revenue for the service performed within the Chicago switching district. The Lehigh Valley Transportation Company made a rather extended showing as to its revenue and expenses. This showing, if the boat line were an independent carrier, would seemingly prove that the revenue for its service was meager and in some instances noncompensatory. We do not, therefore, hold that the divisions received by the boat line for the boat line's service are excessive or unreasonable. But the rail carriers east of Buffalo assigned no ground for the augmentation of their revenue resulting from the cancellation of the supplement here in issue. It therefore follows that the failure of the rail lines parties to the joint rate in question to make such defense of the increased rates and their bearing upon the rail carriers' revenue resulting therefrom which would be augmented by the cancellation of this supplement will necessitate and require an order directing the cancellation of the supplement under suspension except as hereinafter indicated.

This finding under section 1 would render unnecessary detailed consideration of the evidence with relation to sections 3 and 4. The actual rates and the proposed rates as indicated in complainant's exhibit appear in the table appended.

Statement of rates, in cents per 100 pounds, to New York, N. Y.

Commodity.	Minimum weight (pounds).		From Argo, Ill., Chicago, Ill., lake and rail (present).		From Argo, Ill., lake and rail (proposed). ¹		From Argo, Ill., Chicago, Ill., all rail.		From Pekin, Ill., Peoria, Ill., lake and rail.		From Louisiana, Mo., St. Louis, Mo., East St. Louis, Ill., Granite City, Ill., lake and rail. ²	
	Domestic.	Export.	Domestic.	Export.	Domestic.	Export.	Domestic.	Export.	Domestic.	Export.	Domestic.	Export.
Corn sirup, mixed.....	36,000	36,000	25	26	29.1	29.1	31.5	31.5	29	29	31	31
Corn oil.....	30,000	30,000	26	26	29.7	29.7	31.5	31.5	29	29	31	31
Corn sirup, unmixed (glucose).....	36,000	40,000	17	15	20.1	17.8	25	20	19	17	21	19.1
Corn sugar.....	36,000	60,000	21	19.5	24.1	21.5	26	23.6	23	21.5	25	23.5
Corn oil meal.....	40,000	60,000	15.5	13	18.3	14.8	18.4	15	17	14.5	18.5	15
Corn oil cake (ground)...												
Gluten feed.....	35,000	60,000	15.5	14	18.6	15.8	18.4	16.8	17	15.5	18.5	16.5
Starch, dextrine, gluten meal.....	40,000	60,000	15.5	14	18.3	15.8	18.4	16.8	17	15.5	18.5	16.5

¹ Based on rate of \$11 per car, composed of rate of 1 cent per 100 pounds, minimum 60,000 pounds, from Argo, Ill., via C. & A. R. R. to connection with C., R. I. & P. R. R., and rate of \$5 per car via C., R. I. & P. R. R. to its dock.

² Not applicable from Louisiana and St. Louis, Mo., on corn sirup, unmixed, and corn sugar.

³ 21 cents from Chicago via Lehigh Valley Transportation Company, carried in L. V. T. Co. I. C. C. 83.

17 cents from Chicago via Lehigh Valley Transportation Company carried in L. V. T. Co. I. C. C. 83.

NOTE.—The 21 and 17 cent rate via Lehigh Valley Transportation Company applies from its dock to New York.

The proposed cancellation would, in some instances, appear to result in rates lower from Peoria and Pekin through Chicago over the rail-lake-and-rail route than the rates upon the same products when issuing from the mill in the Chicago district to the same destinations. This inversion of the present relationship and of what would be the normal relationship, so far as distance is concerned, appears to be undue discrimination. It is unnecessary, however, to make a specific finding thereon inasmuch as we have already held under section 1 that the suspended supplement must be canceled.

The violation alleged of section 4 is based on the contention that the cancellation of the proposed tariff would result in a higher charge for a shorter than for a longer haul over the same line in the same direction. For reasons above cited it is not necessary to make a finding upon this point.

The Lehigh Valley Transportation Company contends that it requested the Chicago & Alton to cancel the tariff here involved, inasmuch as the maintenance of said tariff would leave in effect a preferential rate adjustment from Argo as against competing mills at Roby, Ind., and Hammond, Ind., both within the Chicago switching district.

The following were the rail-lake-and-rail rates in cents per 100 pounds on glucose (corn sirup unmixed) to New York City, during the season of 1916:

From—	Domestic. Carload, minimum weight 36,000 pounds (except as noted).	Export. Carload, minimum weight 40,000 pounds (except as noted).
Argo, Ill.....	17	15
Hammond, Ind.:		
From Mar. 20 to Aug. 15, 1916.....	18½	16½
From Aug. 15, 1916, to date.....	22½	18½
Roby, Ind.:		
From Mar. 20 to Aug. 15, 1916.....	18½	16½
From Aug. 15, 1916, to date.....	22½	18½

The above rates include 1½ cents per 100 pounds on glucose, carload, minimum weight 60,000 pounds, from Hammond and Roby, Ind., to South Chicago, Ill.

This seems to disclose an unjustly discriminatory relationship as between these competing mills, all of which are within the Chicago switching district.

We shall, therefore, except from our order requiring the cancellation of the suspended supplement only the items which affect the rates on glucose or corn sirup, unmixed, from Argo. We are of opinion that the rates on glucose, rail lake and rail, from Argo, Ill.,

should be made identical with those from Hammond, Ind., and from Roby, Ind.—all points within the same switching district—to the same destinations.

The difficulty in this matter is that whether we vacate our order of suspension or whether we require the suspended tariff to be canceled there will result in either case a situation apparently involving discrimination. If, as we here propose, the suspended rates go into effect on glucose, the present gross discrimination as between mills all in the Chicago district will be abated, if not entirely removed. This putting of Chicago mills on a parity may result, as protestants contend, in a discrimination against the Chicago mills as a whole in favor of Pekin and Peoria shippers of glucose. But this latter discrimination will be much less in amount than that removed, and the carriers will be expected promptly to make such adjustment as between the Chicago shippers and the Peoria and Pekin shippers of glucose as to remove any residual undue discrimination. An additional reason for making this exception to our order of cancellation is the fact that from Hammond and Roby, the rail-lake-and-rail rate of 22½ cents, domestic, to New York represents a fairly appropriate spread of 2½ cents below the all-rail rate from Chicago to New York. This all-rail rate was prescribed by us as just and reasonable. There can, therefore, be no reason whatever for permitting the continuance from Argo of a 17-cent rate, rail lake and rail, at a spread 8 cents below the all-rail rate, and 5½ cents below the rail-lake-and-rail rate carried by their competitors at Hammond and Roby.

43 I. C. C.

No. 9129.
DREYFUS BROTHERS
v.
ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted December 20, 1916. Decided March 13, 1917.

Southern classification rating of third class on less-than-carload shipments of candy in cartons in barrels or boxes found to have been justified. Complaint dismissed.

D. R. Dreyfus for complainants.

Edward D. Mohr and *W. T. Weeks* for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainants, who are engaged at Montgomery, in the state of Alabama, in the manufacture of the cheaper grades of candy, here question the reasonableness of the application under southern classification of third class to all less-than-carload shipments of that commodity, regardless of their value.

Prior to June 3, 1915, the product of complainants' factory, being then valued at 6 cents a pound or less, moved upon fourth-class rates; candies valued at 12 cents and under, but over 6 cents, were assessed at third-class rates; while those valued in excess of 12 cents took first-class rates. The values just stated applied to confectionery, including candy, popped corn, and puffed rice confectionery, chocolate coatings and liquors. By a tariff filed to become effective on June 3, 1915, the carriers endeavored to eliminate from the classification the ratings based upon value and to make the third-class rates applicable on all less-than-carload shipments of these commodities, except when packed in glass, earthenware, etc. No protest was at that time filed with the Commission against the proposed change in ratings on candy, chocolate coatings and liquors, and the third-class rating upon those items therefore became effective on the date last mentioned. On the protest of certain interested shippers, however, the proposed change in rating on popped corn and puffed rice confectionery was temporarily suspended; it finally went into effect on July 1, 1916, following our report and order in *Southern Classification Ratings*, 39 I. C. C., 178, 178, wherein the action of the carriers was held to have been justified.

The new third-class rating, as applied to the shipments made by the complainants, is alleged to be "unreasonable, discriminatory, and prohibitive." About 80 per cent of their output is disposed of in New Orleans and at points beyond, the complainants selling to jobbers only. The present rate from Montgomery to New Orleans is 51 cents; the rate formerly in effect was 38 cents. The freight charges on the candy alone amount to about 10 per cent of what is referred to as the "normal" price of the goods; for each 100 pounds of candy shipped, however, freight must be paid on 117 pounds, the excess representing the weight of the containers. As the complainants procure their sugar from New Orleans and pay thereon a rate of 21 cents they are at a rather substantial trade disadvantage in their competition with candy manufacturers at that point.

The principal complaint appears to be one of alleged discrimination, due to the fact that the cheap candies manufactured by the complainants must pay the same freight rates as "crackerjack," "checkers," and similar confectionery, which, according to the complainants' contentions, weigh only about one-half as much for the same bulk as the product of their factory, and therefore require twice the car space, double the amount of handling, etc. This may be true with respect to the output of the Dreyfus Brothers' factory, for 75 per cent of the candy manufactured by that concern is "stick" candy and the balance, as we understand the record, is "bucket" candy, both being heavy grades. There are other kinds of confectionery, however, that are said to weigh about the same as the popped corn variety. Prior to June 3, 1915, popped corn confectionery paid fourth-class rates, having been shipped under a valuation of 6 cents a pound. Its present value is 8½ or 9 cents a pound, about the same as some of the candy manufactured by the complainants. As the present selling price of the complainants' candy is in excess of 6 cents a pound, the restoration of the former rating based on value would not benefit it.

Evidence was introduced of record tending to prove that the practice of basing ratings upon the value of the candy was unsatisfactory alike to the carriers and a majority of the candy manufacturers. The ascertainment of the exact value at the time of the shipment was not always possible, and complications frequently arose; candies of different values were sometimes packed in the same cartons; different discounts were allowed, according to the time of payment of the bills; when the jobber purchased candy from the manufacturer and ordered it shipped direct from the factory to his retail customers the proper value to be placed upon the shipment was a matter of doubt. The candy being shipped by freight throughout the country ranges in value from 8 cents to 25 cents a pound, but 85 per

cent of it is said to be of a value of 15 cents a pound or less. In *In the Matter of the Suspension of Western Classification No. 51*, 25 I. C. C., 442, 508, we said:

According to the record, the almost universal opinion is that there should be one rating on candy.

The present rating in southern classification territory has now been in effect for nearly two years without complaint. In western classification territory candy is rated second class and in official classification territory, with minor exceptions, 15 per cent less than second class. In a case now pending, *National Confectioners' Asso. v. A. & R. Ry. Co.*, Docket 8764, the rating of candy in western classification is attacked as unjust and unreasonable, and reference is made to the third-class rating in southern classification as being just and reasonable.

Canned food products, such as fish, meats, fruits, vegetables, and milk, are all classified third class under southern classification. The defendants contend that the value of these commodities is generally less than that of candy, that the risk of handling them is less, that their weight per cubic foot is heavier, and that the volume of their movement is far in excess of that of candy.

From the facts shown of record we have reached the conclusion, and so find, that the defendant carriers have justified the rating of third class on candy, shipped in less-than-carload quantities, in cartons, barrels, or boxes. It follows that the complaint must be dismissed, and it will be so ordered.

43 I. C. C.

No. 8672.
TRAFFIC BUREAU OF NASHVILLE
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted October 23, 1916. Decided March 13, 1917.

Rate on coal from western Kentucky mines on the Louisville & Nashville Railroad to Nashville, Tenn., increased from 80 cents to 90 cents per ton on February 16, 1916, found not justified, and a rate of 80 cents per ton prescribed as maximum for the future. Reparation awarded.

T. M. Henderson for complainant.

W. A. Northcutt and *William Burger* for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

In *Traffic Bureau of Nashville, Tenn., v. L. & N. R. R. Co.*, 28 I. C. C., 533, a rate of \$1 per ton on coal to Nashville, Tenn., from western Kentucky mines on the Louisville & Nashville Railroad and from Alabama and Tennessee mines, the movement from which is through Alabama, on the Nashville, Chattanooga & St. Louis Railway was found unreasonable, and rates of 80 cents from mines on the first-mentioned line and of 90 cents from mines on the latter line were prescribed as maxima for the future. Without filing with us any petition for rehearing, the defendant petitioned the United States district court to have the order prescribing the above rates enjoined, set aside, and annulled on various grounds which need not be stated here. That petition was denied. *L. & N. R. R. Co. v. United States*, 216 Fed., 672. An appeal was taken to the Supreme Court of the United States, and the judgment of the district court was affirmed. *L. & N. R. R. Co. v. United States*, 238 U. S., 1.

On February 16, 1916, two days after the order prescribing the above rates expired, the Louisville & Nashville Railroad increased its rate from western Kentucky mines to Nashville to 90 cents per ton. Complainant here attacks this rate as unjust and unreasonable to the extent that it exceeds the previous rate of 80 cents per ton, and asks for reparation for and on behalf of certain of its members whose names appear in an amendment to the complaint.

The mines in question are located on three divisions of defendant's line, viz, the Henderson, the Madisonville, Hartford & Eastern, and the Owensboro & Nashville divisions. The Henderson division

extends from Henderson, Ky., to within a few miles of Nashville, and is part of the main line from St. Louis. It also embraces a branch line extending from Morganfield to Atkinson, Ky. The Madisonville, Hartford & Eastern division extends from Atkinson to Ellmitch, Ky. The Owensboro & Nashville division extends from Owensboro to Adairville, Ky., connecting with the main line from Louisville at Russellville, Ky., which in turn connects with the Henderson division at Guthrie, Ky. There are 31 mines on the Henderson division, two on the Madisonville, Hartford & Eastern division, and 17 on the Owensboro & Nashville division. The average distance from all the mines to Nashville is shown by defendant to be 113.25 miles, but as the largest mines are located at Earlington and Morton, Ky., points on the Henderson division 104 and 101 miles, respectively, from Nashville, the weighted average haul is probably not more than 110 miles.

The Henderson division, on which most of the mines are located, has a maximum grade of 0.6 of 1 per cent, and a maximum curvature of 4 degrees. The ruling grades between Guthrie and Nashville are in favor of the load into Nashville. The maximum rating of the locomotives used from the mines on the Henderson division to Guthrie is in excess of 1,200 gross tons, and from Guthrie to Nashville 1,165 gross tons. On the Morganfield branch it is 875 gross tons from Providence to Atkinson and somewhat higher north thereof. On the Owensboro & Nashville division it is 790 gross tons north of Russellville, and in excess of 1,200 gross tons from Russellville to Guthrie. Generally speaking, full train tonnage is handled on each of the divisions. For example, the actual average train tonnage from Guthrie to Nashville during a test period selected by defendant was 1,106 gross tons, the maximum rating of the engines used being 1,165 gross tons. On the other hand, the maximum rating of the engines northbound from Nashville to Guthrie is only 800 gross tons. Defendant gets more actual service and quicker returns out of the coal equipment used between the mines in question and Nashville than it gets on the average from all its coal equipment. On the Morganfield branch north of Providence and on the Owensboro & Nashville division, the cars are generally switched to and from the mines by the local-train crews. The same is true on the Henderson division south of Morton, except in very busy seasons, when it is more economical to assemble the coal with mine crews.

During the life of the rate of \$1 per ton, the tonnage rating of the engines used from Guthrie to Nashville increased from 660 tons to 1,165 tons. Of this increase of 505 tons, 290 tons resulted from reduc-

tions in grades and 215 tons from the greater tractive power of the locomotives used. The average loading of the cars increased from 16 tons to 41 tons.

In the previous case complainants laid special stress on the rates from the western Kentucky mines to Louisville and Memphis as demonstrating by comparison the alleged unreasonableness of the \$1 rate from the same mines to Nashville. At that time the rate to Memphis, an average distance of 276 miles, was \$1.10 per ton, and to Louisville, an average distance of 142 miles, 60 cents per ton. The operating conditions from the mines to the three cities named were shown to be substantially similar. Defendant contended, however, that the rates to both Memphis and Louisville were held down by water competition from mines in the Pittsburgh district and in West Virginia, and a somewhat extended analysis of that situation was therefore made. The history of the rate to Memphis for 30 years was reviewed and the conclusion reached that water competition did not fix the measure of the rail rate, which conclusion was merely a reiteration of our finding on the same question in *Memphis Freight Bureau v. L. & N. R. R. Co.*, 26 I. C. C., 402. In respect to the situation at Louisville, no definite proof of controlling water competition was produced; one witness for the defendant herein merely expressed the opinion that coal was or could be barged down the Ohio River from Pittsburgh for 12 or 15 cents per ton. That same witness later admitted that the rate to Louisville was not made "to meet water competition to Louisville particularly, but because the Illinois Central makes a rate of 60 cents per ton from western Kentucky mines to Louisville." In view of the above facts, we concluded that a comparison of the rates to the three cities was not vitiated by any substantial dissimilarity in surrounding conditions.

In the district court the defendant herein attacked the order prescribing the rate of 80 cents on the ground, among others, that the facts found by the Commission did not, as a matter of law, support the order. At page 69 of its decision the court said:

We are of opinion, after careful consideration, in the light of the foregoing principles, that even aside from the fact that the Commission does not appear to have undertaken to set forth in its report all of the evidence and facts upon which its conclusions as to the unreasonableness of the old rates and the reasonableness of the new rates were based, the evidence and facts it did set forth in this report when considered as a whole afforded substantial support to its conclusions in this matter.

The same contention was pressed by defendant in the Supreme Court, and that court, after making a detailed review of the facts stated in the report, said, at page 16:

The report in this case shows that the rate-making body had before it much and varied evidence of this character. After considering it as a whole, the

Commission found that the \$1 rate on coal shipped from the Kentucky mines to Nashville was unreasonable. In the light of these findings we can not say that the facts set out in the report do not support the order.

When the Commission, upon a given state of facts, reaches a conclusion regarding a certain rate, it will adhere to that conclusion in subsequent proceedings regarding the same rate, unless (a) some new facts are brought to its attention, (b) conditions are shown to have undergone a material change, or (c) it proceeded on a misconception or misapprehension. *Banner Milling Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 398, 401; *Receivers & Shippers Asso. v. C., N. O. & T. P. Ry. Co.*, 18 I. C. C., 440, 445; *Flour City S. S. Co. v. L. V. R. R. Co.*, 24 I. C. C., 179, 188; *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684, 685; *Hires Condensed Milk Co. v. P. R. R. Co.*, 38 I. C. C., 441, 445.

No new facts of a substantial character are presented by defendant. Complainant shows that the numerous rate comparisons filed by defendant in the present case are almost identical with those which it filed in the previous case. The record in the previous case was replete with evidence showing the operating conditions from the mines to Nashville and substantial portions of that evidence were filed by complainant as exhibits in the present case. In our previous report we stated that rate comparisons must be analogous to be effective, and in its decision the Supreme Court took occasion to say that "mere comparison between rates does not necessarily tend to establish the reasonableness of either." In the present case, however, defendant introduced no evidence tending to show that the operating and other conditions generally considered in rate making, surrounding the rates with which comparisons are made with the Nashville rate, are similar or substantially similar. It apparently assumed that distance was the controlling consideration. In view of the particularity with which the operating conditions to Nashville were developed in both cases, and of the specific statements in our report and in the decision of the Supreme Court above referred to, there was no warrant for such an assumption in the present case. See *Rates on Lumber from Southern Points*, 34 I. C. C., 652, 673; *Sand from Indiana Stations*, 39 I. C. C., 321, 323.

Defendant admits that the general operating conditions surrounding the traffic in question are practically the same as they were when the 80-cent rate was fixed, but it refers to changes in other conditions. It first shows that the tonnage from the mines on its line to Nashville decreased under the rate of 80 cents per ton. During the two years ended January 31, 1914, its total movement to Nashville aggregated 1,006,600 tons, and for the two years ended January 31, 1916, 834,229 tons, representing a decrease of 172,371 tons, or 17 per cent. During

the same periods the movement from mines on the Nashville, Chattanooga & St. Louis Railway, from which the rate to Nashville was reduced to 90 cents per ton, decreased from 75,883 tons to 28,487 tons, or 62½ per cent. The movement from Illinois Central mines, from which the rate of \$1 was permitted to continue, decreased from 35,511 tons to 4,377 tons, or 88 per cent. It therefore appears that the movement to Nashville decreased via each of the three lines mentioned, but that the percentage of decrease on defendant's line was less than that on either of the other lines. The decrease via those three lines was not explained by defendant, but complainant suggests that the movement from mines on the Tennessee Central Railroad probably increased.

Simultaneously with the publication of the rate of 90 cents to Nashville, here under attack, defendant reduced the rate to Clarksville, Tenn., from \$1 to 90 cents per ton, and later reduced the rates to numerous points intermediate to Nashville and to Clarksville, with the result that departures from the long-and-short-haul rule of the fourth section were removed. This action is referred to as effecting a changed condition. An exhibit introduced by complainant, containing the testimony of defendant's chief witness in another case, shows that as long ago as September, 1912, defendant considered that there was no justification for higher rates to intermediate points than to Nashville. We have repeatedly held that the reasonableness of an increased rate can not be established by simply showing that departures from the fourth section are thereby removed. *Rates Between Shreveport and Texarkana*, 32 I. C. C., 180, 182; *Stone to Des Moines, Iowa*, 37 I. C. C., 372, 373; *Mission Brewing Co. v. A., T. & S. F. Ry. Co.*, 38 I. C. C., 171, 172.

Defendant also points out that the rate from its western Kentucky mines to Memphis has been increased, with our approval, from \$1.10 to \$1.25 per ton since the decision in the previous case. *Coal and Coke Rates in the Southeast*, 35 I. C. C., 187. Coal from western Kentucky mines on defendant's line to Memphis is handled over the same rails as is coal from the same mines to Nashville until it reaches Guthrie, from which point the distance to Memphis is 213 miles and to Nashville 49 miles. The maximum rating of the engines used from Guthrie to Paris, Tenn., is 900 tons and from Paris to Memphis 1,100 tons. The maximum rating of the engines used from Guthrie to Nashville is 1,165 tons. In *Rates on Bituminous Coal*, 36 I. C. C., 401, 406, we found that the movement from western Kentucky mines on defendant's line to Memphis for the year ended March 31, 1911, the last year for which figures were shown, amounted to 421,315 tons, and that the movement had increased in later years. In the present case the average yearly movement from the same mines to Nashville during the

four years ended January 31, 1916, is shown to have been 460,207 tons. In view of these facts, any condition unfavorable to Nashville that would have the effect of vitiating a comparison of the rates to the two cities must be found at the destinations.

As stated, we found in our previous report that water competition did not limit the rail rate to Memphis. In *Rates on Bituminous Coal, supra*, decided more than two years later, we found that the movement of coal by water lines limits "to some extent" the rates that can be charged by the rail lines from interior mines. In *Coal and Coke Rates in the Southeast, supra*, we found that the total consumption of coal in Memphis aggregates over 1,000,000 tons per annum. In the present case it appears that the water-borne coal consumed in Memphis proper amounts to only 15,000 tons per annum, and that is consumed largely by three hotels. The actual competition between the water-borne coal and rail coal is therefore slight. In *Rates on Bituminous Coal, supra*, it also appeared that the rate on coal from western Kentucky mines on defendant's line to Memphis, an average distance of 277 miles, was depressed to meet the rate from Alabama mines on the St. Louis & San Francisco Railroad to Memphis, an average distance of 195 miles. We found that the rate of \$1.25 from the western Kentucky mines to Memphis was a relatively low rate, and we granted permission to defendant herein to continue it, provided the rates to intermediate points did not exceed \$1.35. The rate to Memphis yields ton-mile earnings of 4.89 mills. A rate of 80 cents to Nashville would yield 7.27 mills per ton-mile.

We also found in our previous report that water competition did not compel the rate of 65 cents per ton, advanced from 60 cents per ton during the pendency of that case, for the haul of 142 miles from western Kentucky mines on defendant's line to Louisville. This finding was based partly on an admission to that effect by the chief witness for defendant herein. In the present case no definite evidence bearing on that question was introduced. In the previous case defendant represented that the 60-cent rate to Louisville was made because the Illinois Central maintained a like rate from western Kentucky mines on its line to Louisville. The same representation is made herein regarding the rate of 65 cents. It is further shown that the rates from western Kentucky mines on the Illinois Central to points intermediate to Louisville are higher than 65 cents, hence, it is contended, the rate of 65 cents maintained by that line to Louisville must be depressed. However, it does not follow necessarily that that rate is depressed to less than a reasonable basis, nor to such a level that it can not be fairly used for comparative purposes. *Kentucky Distilleries & Warehouse Co. v. L. & N. R. R. Co.*, 36 I. C. C., 293, 300. As stated, a rate of 80 cents to Nashville would yield 7.27 mills per ton-mile. The 65-cent rate to Louisville yields 4.58 mills

per ton-mile via defendant's line, and 5.2 mills via the Illinois Central.

One comparison urged upon our attention by defendant will now be referred to. In *Coal and Coke Rates in the Southeast, supra*, the respondent carriers, including defendant herein, proposed an increase in the rate from western Kentucky mines to Memphis from \$1.10 to \$1.25 per ton, and also in the rate from the same mines to western Tennessee junction points from \$1.20 to \$1.35 per ton. These junction points are Gibbs, Jackson, Mackenzie, Paris, Union City, Martin, and Rives. We decided that the rates to these points should not be increased to a figure higher than that which we authorized to Memphis, viz, \$1.25. Defendant contends that the rate of 90 cents to Nashville compares favorably with that of \$1.25 to the above-named junction points. Of the points named Gibbs, Jackson, Union City, Martin, and Rives are not located on defendant's line, and there is in this record no evidence of the volume of traffic or of the operating conditions thereto. The other three points, viz, Mackenzie, Milan, and Paris, are located on defendant's Memphis division and, as the operating conditions on that division are described herein, some consideration may be given to a comparison with the rate to those three points. Coal from western Kentucky mines to those three points, like that to Memphis, is handled over the same rails as is coal from the same mines to Nashville until it reaches Guthrie, from which point the average distance to the three points named is 91 miles and to Nashville 49 miles. As stated, the maximum rating of the engines used from Guthrie to Paris is 900 tons and from Paris to Memphis 1,100 tons. Mackenzie and Milan are west of Paris, consequently the coal transported to the three points must encounter all the comparatively unfavorable grades between Guthrie and Paris. As we have seen, the maximum rating of the engines used from Guthrie to Nashville is 1,165 tons and the grades are in favor of the load into Nashville. The record does not indicate that solid trainloads of coal are handled from Guthrie to or through the three junction points named, but it does show that solid trainloads are frequently handled from Guthrie to Nashville. These facts indicate that the general operating conditions are more favorable from the mines to Nashville than to the three junction points and that a rate of 80 cents to Nashville would not be out of harmony with the rate of \$1.25 to the three junction points.

It is not deemed necessary to review further the contentions of defendant in this case nor to review in detail the evidence and exhibits submitted by complainant. Conditions have not changed since the rate of 80 cents per ton to Nashville was fixed; very few changes have taken place in the rates from and to other points with which comparisons were made by both complainant and defendant

in the previous case, and of the rate changes which have taken place more reductions than increases have been made.

In our previous report we made special reference to a comparison of the car-mile revenue from the Nashville coal rate with the average car-mile revenue on all freight handled by defendant during the fiscal year 1912. Complainant has brought this comparison down for the years 1913, 1914, and 1915. The loaded car-mile revenue from the former rate of 80 cents per ton to Nashville was 29.8 cents. In *Louisville & Nashville R. R. Coal and Coke Rates*, 26 I. C. C., 20, 25, it appeared that 67 per cent of the coal cars loaded from Virginia mines on defendant's line to Ohio River crossings moved back empty. Complainant's witness was unable to secure the exact figures regarding the empty movement from Nashville to the western Kentucky mines, but he testified that it was no greater than that from the Virginia mines to Ohio River crossings. On this basis the average revenue per loaded and empty car-mile from the rate of 80 cents per ton would be 17.9 cents. The average loaded and empty car-mile revenue on all freight handled by defendant during the years above referred to was 10.97 cents, 10.54 cents, and 10.13 cents, respectively.

Complainant also compares the revenue per loaded car on coal at 80 cents per ton to Nashville with that of all freight handled by defendant during the three years above mentioned. The revenue per loaded car on the former rate of 80 cents to Nashville was \$32.80, and on all freight for the three years above referred to it was \$26.99, \$27.12, and \$28.41, respectively. To earn \$32.80 per car on coal to Nashville it was necessary for defendant to move each car 183.7 miles; to earn the amounts per car above stated on all freight, 171, 171, and 185 car-miles were necessary. Such comparisons are entitled to consideration in passing on the reasonableness of the rate here in question. *San Toy Coal Co. v. A., C. & Y. Ry. Co.*, 34 I. C. C., 93, 98.

According to the annual reports of defendant to this Commission, the following changes have taken place in the train-mile statistics on its line:

	1912	1913	1914	1915	1916	Increase 1916 over 1912.
Operating expenses per train-mile.....	1.409	1.55	1.53	1.57	1.54	9.3
Average number of passenger cars per train-mile.....	5	5.1	5.19	5.37	5.5	10
Average number of passengers per train- mile.....	49	50	51	45.43	48.49	.....
Average number of loaded cars per train- mile.....	14.54	14.55	14.57	15.94	18.54	27.5
Average number of empty cars per train- mile.....	6.68	6.38	7.33	8.64	8.69	30.1
Average number of tons of freight per train-mile.....	285.02	294.75	296.58	347.47	415.22	45.7

It will be observed that while the operating expenses per train-mile increased 9.3 per cent between the years 1912 and 1916, the average number of passenger cars per train-mile increased 10 per cent; the average number of loaded cars per train-mile increased 27.5 per cent; the average number of empty cars per train-mile increased 30.1 per cent; and the average number of tons of freight per train-mile increased 45.7 per cent. In other words, defendant was able to perform more service for a given sum of money in 1916 than it performed in 1912.

Upon consideration of all the facts of record, we find that defendant has not justified the increased rate of 90 cents per ton to Nashville. We further find that the rate of 90 cents per ton is and has been since February 16, 1916, unjust and unreasonable to the extent that it exceeds and has exceeded 80 cents per ton, and that a rate of 80 cents per ton as maximum will be just and reasonable for the future.

Subsequently to the filing of the original complaint, an amendment thereto was filed containing the names of 21 manufacturing concerns, members of the complainant bureau, who claim reparation on past shipments. The record indicates that these members buy their coal at the mines and pay the freight charges. Having found that defendant has not justified the increased rate of 90 cents per ton, it follows that said members are entitled to awards of reparation to the extent of 10 cents per ton on shipments made on and since February 16, 1916, the effective date of the increased rate, and as to which they paid and bore the freight charges. *Coal Switching Reparation Cases at Chicago*, 36 I. C. C., 226, 236.

These 21 claimants should prepare statements of their claims showing the details of the shipments in accordance with rule V of the Rules of Practice, which statements should be submitted to defendant for verification. After such verification the statements, supported by affidavits of claimants that they actually bore the freight charges, should be forwarded to the Commission, whereupon awards of reparation will be considered, or, if necessary, further hearing will be had as to reparation.

An appropriate order will be entered.

HARLAN, HALL, and DANIELS, *Commissioners*, dissent.

43 I. C. C.

No. 8558.
MILK AND CREAM INVESTIGATION.

No. 7852.
H. P. HOOD & SONS
v.
DELAWARE & HUDSON COMPANY.

Submitted October 27, 1916. Decided March 13, 1917.

Following the *New England Milk Case*, 40 I. C. C., 699, joint rates prescribed for the transportation of carload and less-than-carload shipments of milk, cream, buttermilk, condensed milk, and pot cheese in milk cars from certain points in New York and Vermont on the line of the Delaware & Hudson Company to Forest Hills, Mass.

Whipple, Sears & Ogden; Greenleaf K. Bartlett; and M. Carter Hall for H. P. Hood & Sons.

John E. MacLean and *W. D. Waldron* for Delaware & Hudson Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

By complaint, filed March 25, 1915, H. P. Hood & Sons, milk dealers in the city of Boston, Mass., alleged that the charges maintained by the Delaware & Hudson Company for the transportation of milk from Poultney, Vt., Cambridge, N. Y., and other points on the Rutland & Washington branch of the defendant to Eagle Bridge, N. Y., consigned to Boston, Mass., were unreasonable and unjustly discriminatory, and that the train service for such transportation was unsatisfactory and unjustly discriminatory. Reparation was asked.

After the hearing in No. 7852, on September 17, 1915, the parties conferred and agreed upon a new schedule for transporting complainant's milk. The facts of record do not show that the service rendered complainant was unjustly discriminatory as compared with the service rendered shippers to New York, N. Y.

Subsequent to the original hearing in No. 7852, that proceeding was consolidated with Docket No. 8558, the *Milk and Cream Investigation*. In this report we will consider rates from the points of origin on the Delaware & Hudson Company above described to points in New England.

In the *New England Milk Case*, 40 I. C. C., 699, we prescribed rates on a distance scale for the interstate transportation of milk,

cream, condensed milk, evaporated milk, skim milk, buttermilk, and pot cheese in less than carloads, iced in summer and heated in winter, in milk or refrigerator cars in passenger, milk, or mixed passenger and freight trains, to be applied jointly and severally between points in New England on respondents' lines; and rates were also prescribed for carload shipments on basis of 87½ per cent of those prescribed for less-than-carload shipments, ice to be furnished by shippers.

The Delaware & Hudson was named as a respondent in the order, and, effective October 1, 1916, joint rates were established on the basis prescribed from the points of origin herein involved to Boston in connection with the Boston & Maine, for shipments in milk cars transported in freight, milk, or passenger train service.

The principal milk receiving station of Hood & Sons in Boston is adjacent to the tracks of the Boston & Maine Railroad. Another station is located at Forest Hills, Mass., 5 miles south of Boston, and is served by the New York, New Haven & Hartford Railroad Company. Shipments from these points to points in New England are made by Hood & Sons only, and 40-quart containers alone are used.

Shipments to Boston move over the Delaware & Hudson to Eagle Bridge, thence over the Boston & Maine, and shipments to Forest Hills move over these roads to Fitchburg, Mass., thence over the New York, New Haven & Hartford. The distance from Poultney to Eagle Bridge is 44 miles, and from Eagle Bridge to Boston 168 miles and to Forest Hills 176 miles. The through charges for carload shipments to Boston at the date of hearing, September 17, 1915, were \$67.42 when transported in passenger trains over the Boston & Maine, and \$55.09 when transported in freight trains. On shipments to Forest Hills the combination rate charged was based on Eagle Bridge and Fitchburg. The charges of the Boston & Maine for freight service were 75 per cent of those for passenger train service, whereas the charges of the Delaware & Hudson and New York, New Haven & Hartford were the same for both services.

Under the rates which became effective October 1, 1916, the charges on a carload of two hundred and fifty 40-quart cans to Boston are from \$6.42 to \$11.67 lower than the former rates for passenger train service beyond Eagle Bridge and from 66 cents to \$5.91 higher than the former rates for freight train service beyond that point. The through rates to Forest Hills since October 1, 1916, have been made up of the proportional rates to Eagle Bridge, plus the joint rate of 22.3 cents per 40-quart can beyond that point for shipments in milk cars.

In the *New England Milk Case, supra*, rates were prescribed for shipments in freight cars in freight trains on basis of 75 per cent of
43 I. C. C.

the rates prescribed for shipments in passenger train equipment. The Delaware & Hudson has never published rates for shipments in freight cars. Shipments to Boston have been made in milk cars equipped for passenger train service. It is not shown of record that it would be practicable to ship milk from these points to Boston and Forest Hills in freight cars in freight trains.

The minimum for carload shipments to Boston is 10,000 quarts, or two hundred and fifty 40-quart cans, the same as on shipments to New York City. This minimum has been in effect since Hood & Sons commenced to ship from these points. It is asserted by Hood & Sons that some of the cars can not be loaded to the prescribed minimum. In the *New England Milk Case*, page 736, we said that the minimum should not exceed the loading capacity, including the weight of the ice. It does not appear that the minimum is unreasonable in itself, but if it develops that some cars will not carry the minimum a provision should be inserted in respondents' tariffs to the effect that the capacity of the car shall govern.

The schedule filed by the Delaware & Hudson is in substantial compliance with the order of the Commission so far as shipments to Boston are concerned. It would be improper to require the Delaware & Hudson to publish the distance scale prescribed in the *New England Milk Case* from and to points as to which there is no movement or to publish rates for containers which are not used. If shippers desire to ship to points in New England other than Boston and Forest Hills joint rates on the basis hereinafter set forth should be established.

Upon the facts of record we find that the present rates for the transportation of milk, cream, buttermilk, condensed milk, and pot cheese in milk cars to Forest Hills, Mass., from Poultney, Vt., Cambridge, N. Y., and intermediate points on the line of the Delaware & Hudson Company extending from Castleton, Vt., to Eagle Bridge, N. Y., are unreasonable to the extent that they exceed rates based on the distance scale prescribed in the *New England Milk Case, supra*. An order will be entered in Docket No. 8558 against respondents, Delaware & Hudson Company, Boston & Maine Railroad, and New York, New Haven & Hartford Railroad Company, requiring them to establish joint rates on the above basis. From the facts of record and the conclusions reached in the *New England Milk Case* we find that no reparation should be awarded herein.

43 L. Q. Q.

No. 8112.
MEMPHIS MERCHANTS EXCHANGE ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted December 16, 1915. Decided March 12, 1917.

It is alleged that defendants maintain rates on grain and grain products to and through Cairo, Ill., which unjustly discriminate against grain dealers at Evansville, Ind., Henderson, Ky., and Memphis, Tenn., on shipments from points in the state of Illinois to southeastern, Carolina, and Mississippi Valley territories; *Held*, That the discrimination disclosed arises from failure of defendants to collect their published rates on interstate shipments through Cairo to the destination points involved; and that the mere maintenance of lower rates on intrastate than on interstate shipments does not require a finding by this Commission that would be warrant to defendants to increase their intrastate rates.

C. B. Stafford for complainants.

William R. Bach, A. E. Rust, W. L. Duncan, J. B. Magee, Festes Barter, and J. B. Wenger for Cairo, Ill., Board of Trade and Halliday Elevator Company.

R. R. Hargis for Indianapolis, Ind., Board of Trade.

Alfred Brandeis and *C. B. Stafford* for Cincinnati, Ohio, Chamber of Commerce and Merchants Exchange; Louisville, Ky., Board of Trade; and McDonald & Company, New Albany, Ind.

Charles Rippin for Merchants Exchange, St. Louis, Mo.

R. W. Ropiequet for East Side Manufacturers Association.

H. M. Slater for State Public Utilities Commission of Illinois.

Herman W. Danforth and *A. C. Rice* for Farmers Grain Dealers Association of Illinois.

A. P. Humburg, C. B. Cardy, C. P. Stewart, Edward Barton, S. N. Strawn, R. B. Scott, C. C. Wright, R. H. Widdicombe, W. H. Bremner, E. L. Ballard, J. M. Elliott, and R. V. Fletcher for defendants.

N. W. Proctor for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This is a complaint on behalf of grain dealers engaged in buying, selling, and mixing grain, and manufacturing products thereof, at Memphis, Tenn., Henderson, Ky., and Evansville, Ind., that defendants' rates on grain to and through Cairo, Ill., on shipments from points in the state of Illinois to points in Mississippi Valley, south-

eastern, and Carolina territories unjustly discriminate against complainants with respect to shipments of grain from the same points of origin to the same destinations; and that the maintenance of the present rates to Cairo unduly prefers shippers from that point.

The Merchants' Exchange of St. Louis, Mo.; Board of Trade of Cairo; Cincinnati Chamber of Commerce and Merchants' Exchange; Louisville Board of Trade; McDonald & Company, New Albany, Ind.; East Side Manufacturers' Association, Belleville, Ill.; Indianapolis Board of Trade; State Public Utilities Commission of Illinois; Illinois Grain Dealers' Association; and Farmers' Grain Dealers' Association of Illinois have intervened. The following carriers also intervened: Cincinnati, Hamilton & Dayton Railway Company; New York Central Railroad Company; Lake Erie & Western Railroad Company; Toledo, St. Louis & Western Railroad Company; Baltimore & Ohio Southwestern Railroad Company; Chicago & Alton Railroad Company; Chicago & North Western Railway Company; Toledo, Peoria & Western Railway Company; Chicago & Illinois Midland Railway Company; Chicago, Burlington & Quincy Railroad Company; and Minneapolis & St. Louis Railroad Company.

Cairo is located in the extreme southern part of the state of Illinois, near the confluence of the Ohio and Mississippi rivers. It is reached by the Illinois Central; Cleveland, Cincinnati, Chicago & St. Louis; Mobile & Ohio; St. Louis, Iron Mountain & Southern; and St. Louis Southwestern railroads. Evansville, Ind., is on the north side of the Ohio River, across from Henderson, Ky., and is reached by the Chicago & Eastern Illinois; Cleveland, Cincinnati, Chicago & St. Louis; Evansville, Suburban & Newburgh; Illinois Central; Louisville & Nashville; Louisville, Henderson & St. Louis; and Southern. Henderson is 12 miles from Evansville and is served by the Illinois Central; Louisville & Nashville; and Louisville, Henderson & St. Louis. New Albany, Ind., is across the Ohio River from Louisville, Ky., and is served by the Baltimore & Ohio Southwestern; Chicago, Indianapolis & Louisville; Pittsburgh, Cincinnati, Chicago & St. Louis; and Southern. New Albany, Louisville, and Cincinnati are known as upper Ohio River crossings. Rates on grain from Illinois points are equalized through these crossings to points in Carolina and southeastern territories with rates via Cairo and the other lower crossings. Memphis is on the Mississippi River, 169 miles south of Cairo, and is reached by numerous railroads, including all those which serve Cairo, except the Cleveland, Cincinnati, Chicago & St. Louis.

What is known as southeastern rate territory lies east of the main line of the Mobile & Ohio from Corinth, Miss., to Mobile, Ala.; on and south of the Memphis division of the Southern Railway from

Corinth to Chattanooga, Tenn.; and on and south of a line drawn from Chattanooga through Cleveland, Tenn., Murphy, N. C., Wall-halla, S. C., Greenwood and Columbia, S. C., to Wilmington, N. C. In other words, this territory embraces practically the entire states of Georgia and Florida, most of Alabama, a small portion of Tennessee, and the southern half of South Carolina. Carolina territory lies north of southeastern territory, east and south of a line drawn from Cleveland via the Southern Railway through Athens and Knoxville, Tenn., to Bristol, Tenn., including Bristol and points between Knoxville and Jellico, Tenn., not including Jellico; thence east via a line drawn just south of the main line of the Norfolk & Western from Bristol to a point just south of Norfolk, Va. Mississippi Valley territory lies on and west of the Mobile & Ohio, as embraced in the description of southeastern territory, and extends west to the Mississippi River.

For many years, at least since 1900, Memphis, Henderson, Evansville, and Cairo have been markets for the handling of grain, which moves in large volume from Illinois to and through all of these points. Southeastern, Carolina, and Mississippi Valley territories afford consuming markets for grain shipped through the Ohio River crossings and Memphis. The producing territory involved in this proceeding is known as the grain belt of Illinois, which comprises that part of the state north of the line of the Baltimore & Ohio Southwestern.

The various railroads serving Cincinnati, Louisville, Evansville, and Cairo have for many years, as now, competed with each other for the movement of through traffic to the southeast originating in the north and west. Carriers leading south from the Ohio River do not as a rule extend into the territory north of the river but have their northern termini at the crossings. They and their connections north of the river have not generally made joint rates to points in the southeast, but rates and routes are so adjusted that there is free through movement via all the crossings. Cincinnati is the only Ohio River crossing served by the Cincinnati, New Orleans & Texas Pacific, and this carrier derives its greatest traffic from business passing through that gateway. It has a shorter haul on a small proportion of traffic which moves over the Southern through Louisville and Evansville, but it does not share in that which moves from these crossings via the Louisville & Nashville. It has no share in the traffic that moves from Cairo. The Louisville & Nashville serves Cincinnati, Louisville, and Evansville, and endeavors to secure the greatest possible movement through those crossings. The Southern serves Louisville and Evansville, and naturally prefers those crossings to Cairo. The Illinois Central reaches Louisville, Evansville,

and Cairo, but does not reach Cincinnati. The Mobile & Ohio reaches Cairo but not any other Ohio River crossing. Under the adjustment of rates on grain that has prevailed in the past from the various Ohio River crossings to points in the southeast, a part of the traffic on approximately an equal rate basis has moved via all the crossings. Dealers located at each of them are thus able to compete for business on a substantially equal basis.

Rates to Memphis from the producing territory in question are uniformly 4 cents higher than to Cairo and Evansville, and carriers from Memphis, by transit arrangements, equalize the rates through the latter point to southeastern, Carolina, and Mississippi Valley territories with those through the Ohio River crossings. A large percentage of the grain handled at Cairo, Henderson, Evansville, and Memphis is drawn from Illinois, and most of it is sold in the territories here involved. The grain shipping interests of all the Ohio River crossings and Memphis, therefore, come in competition with Cairo in buying grain in Illinois and selling it in the consuming territories.

It is shown that by tariffs to become effective March 15, 1913, filed with this Commission and with the Railroad and Warehouse Commission of Illinois, since superseded by the State Public Utilities Commission of Illinois, the defendants jointly and severally proposed to increase by an average amount of 1 cent per 100 pounds their interstate rates on grain and grain products from points in the state of Illinois to Evansville, Henderson, Cairo, Memphis, and other destinations in the south and southeast; that in the same tariffs the defendants proposed to increase in the same amounts their intrastate rates on the same commodities from points in Illinois to Cairo, East St. Louis, Peoria, and Chicago, Ill.; that the proposed increased rates were suspended by this Commission and by the state commission; that in *Grain Rates in Central Freight Association Territory*, 28 I. C. C., 549, the proposed increases in interstate rates were found to have been justified, and on January 8, 1914, became effective; that the state commission held the proposed increases in the state rates in suspension until October 8, 1914, when they were disapproved; and that the defendants then prosecuted an appeal to the circuit court of Sangamon county, Illinois, in accordance with the provisions of the state law, where the case is awaiting decision.

There is very little local consumption of grain at Cairo, practically all of it transported to that point being reshipped to interstate points in the south and southeast. Since the increased interstate rates became effective, Illinois grain has been shipped to Cairo at the intrastate rates and reshipped to points of consumption in the territories in question at the rates applicable from Cairo. The fol-

lowing table, submitted by a representative of the Illinois Central, purports to show interstate and intrastate rates in cents per 100 pounds on coarse grain to Cairo from representative Illinois points; through combinations of interstate rates to representative points in southeastern and Carolina territories; and through rates based on the intrastate rates to Cairo as a factor:

To—	Champaign, Decatur, Danforth, Effingham, Farmer City.	Chats- worth, El Paso.	Sub- lette.	Free- port.
Cairo, intrastate.....	7	8	9	10
Cairo, interstate.....	8	9	10	11
Evansville, Ind.....	8	9	10	11
Memphis, Tenn.....	12	13	14	15
Atlanta, Ga.: Memphis combination.....	32	33	34	35
Evansville combination.....	32	33	34	35
Cairo combination, interstate basis.....	32	33	34	35
Cairo combination, intrastate basis.....	31	32	33	34
Birmingham, Ala.: Evansville combination.....	30	31	32	33
Memphis combination.....	30	31	32	33
Cairo combination, interstate basis.....	30	31	32	33
Cairo combination, intrastate basis.....	29	30	31	32
Chattanooga, Tenn.: Evansville combination.....	29	30	31	32
Memphis combination.....	29	30	31	32
Cairo combination, interstate basis.....	29	30	31	32
Cairo combination, intrastate basis.....	28	29	30	31
Jacksonville, Fla.: Evansville combination.....	31	32	33	34
Memphis combination.....	31	32	33	34
Cairo combination, interstate basis.....	31	32	33	34
Cairo combination, intrastate basis.....	30	31	32	33
Charlotte, N. C.: Evansville combination.....	36	37	38	39
Memphis combination.....	36	37	38	39
Cairo combination, interstate basis.....	36	37	38	39
Cairo combination, intrastate basis.....	35	36	37	38
Spartanburg, S. C.: Evansville combination.....	39	40	41	42
Memphis combination.....	39	40	41	42
Cairo combination, interstate basis.....	39	40	41	42
Cairo combination, intrastate basis.....	38	39	40	41

Effective January 1, 1916, rates on grain from Cairo, Evansville, and Memphis to Atlanta and Birmingham were increased 1 cent, making the through combination rates 1 cent higher to the points named than shown in the table.

It will be noted that by paying the intrastate rates to Cairo, and by shipping outbound at rates in effect from Cairo, the Cairo shipper is able to have his grain transported from points of origin in Illinois to points of destination in the territories before mentioned at 1 cent per 100 pounds less for the through movement than is charged shippers at Evansville, Henderson, and other Ohio River crossings and Memphis for through transportation to the same points via the various gateways at which such shippers are engaged in business.

However, upon examination of tariffs on file we find that the Illinois Central in M. P. Washburn's Carolina grain tariff No. 2. I. C. C. No. 155, effective November 1, 1915, which canceled I. C. C. No. 141, effective April 15, 1915, naming the same rates, publishes

joint through rates on grain and grain products, carloads, from its grain-producing stations in Illinois to local and junction points in Georgia, North Carolina, and South Carolina. The joint through rates from and to illustrative points named below are as follows:

From—	To Charlotte, N. C.			To Spartanburg, S. C.		
	Grain.	Grain products.	Flour.	Grain.	Grain products.	Flour.
Via Cairo, Mounds, or Evansville:						
Champaign.....	35.8	(1)	(1)	38.8	(1)	(1)
Decatur.....	35.8	(1)	(1)	38.8	(1)	(1)
Danforth.....	35.8	(1)	(1)	38.3	(1)	(1)
Farmer City.....	35.8	(1)	(1)	38.8	(1)	
Chatsworth.....	35.8	36.5	38.5	38.8	39.5	40.5
El Paso.....	35.8	36.5	38.5	38.8	39.5	40.5
Sublette.....	35.8	36.5	38.5	38.8	39.5	40.5
Freeport.....	36.3	37.0	39.0	39.3	40.0	41.0
Via Cairo or Mounds:						
Effingham.....	35.8	(1)	(1)	38.8	(1)	(1)

¹No joint rates published.

At the hearing no reference was made to the above tariff or the joint rates therein provided. In connection with this tariff the transit circular of the Illinois Central provides that shipments out-bound from Cairo shall be billed at the through rates from points of origin. We are not advised on this record as to what shipments the rates named are applied in actual practice. It will be noted that these joint rates are generally less than the combination of interstate rates into and out of Cairo.

Competition in the sale of grain is keen and active. Slight differences in cost or in price of sale decide the markets to which grain will go, and very slight differences in rates will decide the routes over which it will move. Buyers and sellers of grain figure on fractions of a cent. A total freight charge of 1 cent per 100 pounds less via Cairo than via the other gateways means that a dealer at Cairo can bid a fraction of a cent more on grain or can sell it for a fraction of a cent less than his competitors at other crossings and secure the business.

As before stated, except as shown above, there are no joint rates on grain applicable to shipments from the Illinois grainfields to southeastern territory published by the defendants. The through rates are made up of a combination of the rates to and from the Ohio River crossings. It was stated by a representative of the Louisville & Nashville that since 1881 Louisville, Evansville, and Henderson have been on a parity with Cairo with respect to rates on grain shipped to the southeast; and that since 1898 proportional rates have been maintained from Louisville and Cincinnati, which also place them on the same basis with respect to through shipments of grain from the Illinois fields to the southeast. Since 1886 through rates via Mem-

phis have also been equalized with rates through the Ohio River crossings.

Joint rates are published from Illinois points to points in Mississippi Valley territory. Prior to January 8, 1914, the through rates were equal to the combinations of intermediate rates to and from Cairo, as well as of rates to and from Memphis. By the use of the intrastate rates to Cairo, plus the reshipping rates from Cairo to points in the Mississippi Valley, the through charges via Cairo may be reduced 1 cent. The following table shows the rates, in cents per 100 pounds, on corn and oats from various points in Illinois to New Orleans territory; first the rates applicable intrastate and interstate to Cairo; the joint through rates to New Orleans in effect prior to and from January 8, 1914; and the charges that would result by using intrastate rates to Cairo:

From—	To Cairo.		To New Orleans.		Combination rates.
	Intra-state.	Inter-state.	Prior to Jan. 8, 1914.	Effective Jan. 8, 1914.	
Spaulding.....	7	8	17	18	17
Clinton.....	7	8	17	18	17
Havana.....	8	9	18	19	18
Hervey City.....	7	8	17	18	17
Hawley.....	8	9	18	19	18
Thomas.....	7	8	17	18	17
Ridgeville.....	7	8	17	18	17
Irwin.....	8	9	18	19	18
Griswold.....	9	10	19	20	19
Danforth.....	7	8	17	18	17
Panola.....	8	9	18	19	18
Eldona.....	9	10	19	20	19
East Dubuque.....	11	12	21	22	21
Paxton.....	7	8	17	18	17
Champaign.....	7	8	17	18	17
Effingham.....	7	8	17	18	17
Chatsworth.....	8	9	18	19	18
Farmer City.....	7	8	17	18	17
Mason City.....	8	9	18	19	18
Decatur.....	7	8	17	18	17
Vandalia.....	7	8	17	18	17
Sublette.....	9	10	19	20	19
El Paso.....	8	9	18	19	18

Joint through rates, in cents per 100 pounds, on corn and oats from certain Illinois points to illustrative points in Mississippi Valley territory are as follows:

From—	To Meridian.	To Jackson.	To Hattiesburg.	To West Point.	To Brookhaven	To Lumberton.
Danforth.....	26	26	27	26	27	27
Paxton.....	26	26	27	26	27	27
Champaign.....	26	26	27	26	27	27
Effingham.....	26	26	27	26	27	27
Chatsworth.....	27	27	28	27	28	28
Farmer City.....	26	26	27	26	27	27
Mason City.....	27	27	28	27	28	28
Decatur.....	26	26	27	26	27	27
Vandalia.....	26	26	27	26	27	27
Freeport.....	29-1 28	29-1 28	30-1 29	29	30-1 29	30-1 29
Culton.....	28	28	29	28	29	29
Sublette.....	28	28	29	28	29	29
El Paso.....	27	27	28	27	28	28
Warren.....	29	29	30	29	30	30

Reshipping and local rates on corn and oats from Cairo to Mississippi Valley points, in effect on January 1, 1916, and January 8, 1914, and the local rates from Cairo to the same points, effective on the same dates, are as follows:

From Cairo to—	Reshipping rates.		Local rates.	
	Jan. 1, 1916.	Jan. 8, 1914.	Jan. 1, 1916.	Jan. 8, 1914.
Meridian.....	18	12½	23	16½
Jackson.....	18	12½	22	16½
Hattiesburg.....	19	17	23	21
West Point.....	18	17	20	17½
Brookhaven.....	19	17	23	21
Lumberton.....	19	17	23	21

There are joint rates in effect from Illinois shipping points to Memphis. The rates on wheat are somewhat higher than the rates on corn and oats to certain Mississippi Valley points, but the difference between the intrastate and interstate rates to Cairo is the same on all kinds of grain and the products thereof. We here consider only the rates on grain.

The defendants concede that competition between carriers and markets demands that the Ohio River crossings and Memphis should be, so far as the rates on grain to these territories are concerned, maintained on a parity. The interveners, excepting alone the Cairo interests, show that the ability of Cairo dealers to ship through from Illinois points to points in consuming territories at a total charge of 1 cent less than via the other gateways constitutes a preference which has a marked effect on their ability to compete.

The Cairo Board of Trade states that its shippers of grain have an advantage of 1 cent per 100 pounds in freight rates paid by them on traffic to the southeast over their competitors who were formerly on a parity with respect to such shipments. It does not admit that it has a similar advantage with respect to shipments to Mississippi Valley territory. It is testified by a Henderson dealer that he was informed by a Cairo dealer that grain shipped into Cairo by the Illinois Central under intrastate rates was turned over to the Mobile & Ohio at Cairo, and that the latter carrier applied its reshipping rates from Cairo with the result that the through rates were cut to the extent of 1 cent. It is certain that if dealers in Cairo pay the intrastate rates inbound and are permitted to ship the same or an equivalent amount of grain outbound to Mississippi Valley points at reshipping rates maintained from Cairo, they do pay 1 cent less for through transportation than a shipper would pay from point of origin, or a dealer at Memphis, Evansville, or Henderson would pay on through shipments via these points.

The alleged discrimination brought about by the adjustment of rates under consideration we are asked by all parties, except the Cairo interests, to require the defendants to remove. Complainants request that the parity of rates that existed prior to January 8, 1914, via the various gateways from Illinois points to the consuming territories in question be maintained for the future. There is no attack upon the reasonableness of the rates involved, and no evidence was submitted by complainant with respect to that question. Cairo shippers wish to continue to enjoy the advantage which they admit they are now receiving. At the hearing a motion was made in behalf of the Cairo Board of Trade that this proceeding be postponed until the case now before the Illinois court is decided. It was asserted that if the court held the decision of the Illinois commission in error, and the intrastate rates were increased as a result, then Cairo would have no advantage in the rate adjustment. No good purpose would have been served, in view of the conclusion we reach herein, by a postponement of the hearing and disposition of this case. On brief, it is urged by the Cairo Board of Trade that as the question of the propriety of the increase of intrastate rates to Cairo is now before the state court, this Commission is excluded from consideration of that issue. The answer to this is that no such question is before us in this proceeding. The question here is whether the lower through charges, based on intrastate rates to Cairo, applied by the defendants from the Illinois grain fields to destination points in the south and southeast unduly discriminate against complaining and intervening grain dealers.

The Cairo interests further assert that they are entitled to whatever advantage may accrue to them from the practice here disclosed, because Memphis, Evansville, and Henderson, and the other Ohio River crossings, have compensating advantages in rates on grain from certain points in Missouri, Oklahoma, Indiana, and Illinois. If, as is asserted, Cairo is unduly discriminated against by reason of rates on grain maintained by carriers from any points with which its dealers compete, that question may be determined only upon proper proceedings where the issue is raised, and with respect to which hearing is had, as provided by statute.

It is insisted by the defendants that the only proper solution of the case as presented is the application of but one system of rates intrastate and interstate from points in Illinois to Cairo; and that the measure of these rates should not be the intrastate rates, but the increased interstate rates approved by this Commission. Reference is made by defendants to the decision of the Commission in *Mer-*

chants Exchange of St. Louis v. B. & O. R. R. Co., 34 I. C. C., 341, and reliance had by them upon the statement on page 359 that—

All of these considerations lead to the conclusion that the only effective remedy for the present unsatisfactory situation is to require the maintenance of one set of rates on grain and grain products from interior Missouri points to St. Louis, applicable alike on intrastate and interstate shipments.

It is clear from the opinion in the case referred to that the conditions at St. Louis are different from those which prevail at Cairo, and the finding referred to is for that reason not controlling here. The defendants ask that if the Commission shall find that unjust discrimination exists as complained of, the complainants' prayer be granted by an order that shall admit of increasing their intrastate Illinois rates to Cairo and East St. Louis to the measure of their present interstate rates to those points.

It is now well settled by decisions of this Commission and the courts that if rates approved by state authority cause undue discrimination against interstate commerce, it is the duty and within the power of this Commission to require the removal of the discrimination without at the same time requiring the reduction of reasonable interstate rates. *Houston & Texas Ry. v. United States*, 234 U. S., 342; *Railroad Commission of La. v. St. L. S. W. Ry. Co.*, 28 I. C. C., 31; *Colonial Salt Co. v. C., B. & Q. R. R. Co.*, 31 I. C. C., 559. However, the mere maintenance of a rate for movement of traffic wholly within a state lower than a rate found reasonable by this Commission for the local state portion of a through interstate movement does not of itself constitute undue discrimination within the meaning of the act. The State Public Utilities Commission of Illinois, acting within the scope of its authority, has the undoubted right to prescribe rates of freight applicable to movements of traffic by railroad wholly within the state of Illinois. In a case which merely calls to our attention the fact that a state rate is lower than an interstate rate on the same traffic from and to the same points, we have no authority or power to condemn the state rate and take action which would be warrant to carriers to increase it to the level of the applicable interstate rate. It is only in cases where the rates prescribed by state authorities necessarily operate to unduly prefer a state over an interstate shipper, or to otherwise interfere with the proper application of rates prescribed by this Commission, that the authority of the federal law is properly to be exercised.

In this case we have this situation presented: Grain originating in the Illinois territory hercinbefore described is billed to Cairo, and after moving thereto all of it, except the comparatively small amount that may be consumed locally, moves partly to Mississippi

Valley, partly to southeastern, and partly to Carolina territories. In practically all instances, to whichever territory the grain afterwards moves from Cairo, the original inbound billing to Cairo has been registered for transit account, the intent and purpose of which is that as to such of it as subsequently moves out to either of these three territories it may have applied to it whatever total charge may be lawfully available under the transit tariffs from the point of origin to the point of final destination.

There are in effect, as hereinbefore indicated, intrastate rates from the interior points of origin involved to Cairo which are 1 cent per 100 pounds less for local state movements than are the interstate rates approved by this Commission for the same haul. The question for decision is: On shipments consigned in the first instance to Cairo and afterwards moved out under the tariffs and transit provisions in effect, as above stated, is the intrastate rate or the 1 cent higher interstate rate to be applied for the movement to Cairo in making up the lawful total through charge?

The question as to whether a shipment is inter or intra state "must be determined by the essential character of the commerce," which is governed by the intent of the parties controlling the movement of the traffic; and this must be ascertained from all of the pertinent facts, circumstances, and conditions, and "not by mere billing or forms of contract." *C., M. & St. P. Ry. Co. v. Iowa*, 233 U. S., 334. It must be apparent, however, that in the case of traffic moving under transit tariffs providing for proportional or reshipping rates and other facilities or arrangements, dependent in their applicability upon a prior or subsequent movement to or from the transit point, the intent of the parties must be measured not merely by the intent of one of the parties at the time and place of shipment, but we must look to the fully ripened and completed intent as expressed and executed by the party controlling the movement of the traffic, whether it be the original consignor or consignee or the owner, who may be neither the original consignor nor consignee. The true and controlling intent which determines the essential character of the commerce is not fully matured and fixed until the party who, having the right so to do, decides, under the options lawfully available to him under the transit tariffs, what is to be the final destination of the shipment.

In other words, the intent which is conclusive in determining the character of the completed transportation is not fully expressed or indicated until it is decided whether the shipment will be disposed of locally or the transit tariff provisions availed of for a further movement, treating the whole as a continuous shipment at the lawful through charge, however made up; that is, whether at available

combinations or joint through rates. Neither the billing of the traffic originally to Cairo nor the registry there for transit is conclusive of the intent which finally determines whether it is a state or interstate shipment. That completed and conclusive intent is not expressed, and may not exist, until it is finally determined under the transit tariffs, by whoever controls the movement at the time, whether or not it is to go beyond the limits of the initial state movement.

Manifestly the shipper, consignee, or owner of a shipment can not treat the different stages or steps of the completed movement of the traffic as a single unit for some purposes and as separable or local movements, in part, for other purposes. The essential character of the commerce must be consistently either state or interstate.

What we have here said is not inconsistent with the true intent and meaning of our holdings in *Illinois Grain to Chicago*, 40 I. C. C., 124, and *Merchants Exchange of St. Louis v. B. & O. R. R. Co.*, 34 I. C. C., 341, as applicable to the specific facts there presented.

As before stated, the through interstate rates from Illinois grain-producing points to points in the territories in question are made up of rates to the Ohio River crossings added to the rates from the crossings to destinations. Illinois Central tariff I. C. C. No. A-8970 applies on grain and grain products, carloads, treated in transit, stored, transferred, or weighed at Cairo and Mound City, Ill., and "reshipped to stations on the Illinois Central Railroad (Southern lines), the Yazoo & Mississippi Valley Railroad, and points in Mississippi Valley, southeastern, and Carolina territories; also Key West, Fla., and New Orleans, La., for export." In this tariff, as well as the one in effect at the time this case was heard, it is provided that—

The reshipping in transit privileges, authorized on pages 7 to 13, inclusive, apply on barley, corn, oats, rye, wheat, and grain products, carloads, from points of origin specified in this tariff, consigned locally to Cairo, Ill., and reshipped in carloads via Illinois Central Railroad from Cairo, Ill., to destinations authorized herein, subject to the rules provided herein.

Reshipping in transit privileges are hereby defined as the stopping of grain and grain products for bleaching, blending, change of consignee, change of destination, cleaning, clipping, drying, grading, inspection, mixing, sacking, shelling, shucking, storage, transferring, or weighing, and will apply to such grain and grain products as pass through elevators, warehouses, or mills, or which may be reshipped in original cars, subject to the rules provided herein.

The tariff provides rules for what appears to be adequate policing of all shipments of grain into and out of Cairo and contains among others not here material the following billing instructions:

Grain reshipped * * * from Cairo * * * to destinations * * * will be waybilled from Cairo * * * at the rate applying from Cairo * * *.

On outbound waybills reference must be made to billing from the original point of shipment or the point from which the through rate is to be applied (as the case may be) showing date and number of inbound waybill and Int-43 I. C. C.

tials and number of inbound car. Where the outbound billing covers tonnage reshipped on account of two or more inbound waybills and cars, reference to such inbound billing and cars and the separate tonnage for each must be given.

On bills of lading reference must be made to the original point of shipment of the commodity entitled to transit privilege or to the point from which the through rate is to be applied (as the case may be).

Bills of lading for commodities accorded transit or reshipping privileges will be issued by the agent at Cairo * * * at rates in effect on date of the original inbound shipments to Cairo * * *.

The tariff further provides the following with respect to grain reshipped from Cairo to southeastern and Carolina territories:

On grain or grain products reshipped, or milled products shipped, the rates (in force on date of shipment from point of origin), from point of origin to Cairo, when for points of destination shown in this item, will be applied by refund.

The points of destination referred to are in Carolina and southeastern territories, and similar rules and provisions are in other items in the tariff applicable to all points in the territories involved in this proceeding. Similar provisions are in the tariffs of the Mobile & Ohio applicable to shipments to points in Carolina and southeastern territories as well as to points in the Mississippi Valley territory. In utter disregard of the plain provisions of their tariffs, these defendants, so this record shows, have been applying to interstate shipments state rates applicable to a part of the through movement, which rates are not on file with this Commission. The lawful through interstate charge from any point in the grain fields of Illinois to southeastern territory is made up of the interstate rate to Cairo plus the interstate rate from that point. The rates from Cairo to Carolina and southeastern territories are the same whether the shipments move from Cairo or from beyond, except the joint through rates from Illinois Central stations to Carolina territory, hereinbefore mentioned.

The outbound bill of lading, made in accordance with defendants' established regulations, must show the point of origin of the grain and the date it moved therefrom. The outbound waybill must show in detail the history of the inbound movement. The interstate character of the movement from point of origin to ultimate destination is thus definitely fixed. When it is made to appear that a carload of corn or other grain has moved to Cairo from Champaign, as illustrative, and charges have been paid on the basis of the state rate; and that the same car of corn, or an equivalent amount of the same kind of grain moves outbound from Cairo under transit tariffs to a point in Carolina or southeastern territory, the shipment is established to have moved in interstate commerce, and the duty of defendants is to collect their lawful interstate charge for the through movement from point of origin to ultimate destination.

The Commission has frequently been confronted with the confusion and discriminations arising in various ways out of the differences in state and interstate rates, and in our findings, both formal and informal, we have consistently insisted upon the exaction of the lawfully published interstate charges upon all traffic that moves in interstate commerce. *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.*, 34 I. C. C., 271-273. The machinery for complete and adequate protection of interstate rates from Illinois points to points in southeastern and Carolina territories is in place and in operation at Cairo. It is the duty of defendants to collect, and of shippers to pay, the rates lawfully applicable to interstate shipments.

Also, with respect to shipments to Mississippi Valley territory, and to points in Carolina territory, on grain from Illinois Central stations, there can be no doubt that the effective joint interstate rates must be collected on interstate shipments. If, as contended by the Cairo interests, shipments to Cairo are local to that point, the through interstate rates to Mississippi Valley points do not apply from points of origin. The lawful rates to apply outbound from Cairo, when a shipment is from Cairo proper, are the local rates, which are higher than the reshipping rates from that point. A shipment can not properly be local to Cairo and at the same time be entitled to be reshipped therefrom at the remainder of the through rate from point of origin. The defendants publish through rates on grain and provide for reshipping in transit at Cairo. The stoppage at that point is for the convenience, and doubtless at the request, of Cairo dealers. Any device, by transfer from one carrier to another, or which in any other manner has the effect of defeating through interstate rates, is unlawful.

All this demonstrates that the difference in charges here disclosed does not arise wholly from the difference between the state and interstate rates to Cairo. The defendants at Cairo have not been observing the provisions of their tariffs, and have thus permitted Cairo shippers to avoid the payment of lawful charges applicable to interstate shipments.

In this situation no order is deemed necessary or appropriate at this time, in view of the penal provisions of the statute. These defendants are under legal obligation to apply interstate rates on shipments moving interstate via Cairo as well as via Memphis and the Ohio River crossings. When the lawful rates through Cairo are imposed the discrimination complained of will no longer exist.

It is asserted by the Merchants Exchange of St. Louis that the same situation here complained of prevails at East St. Louis and with respect to shipments through Peoria and Chicago. If that be

true it is the duty of the defendants to collect their interstate rates on shipments of interstate traffic via those gateways. We are not advised on this record as to the conditions which exist at East St. Louis or the other points referred to, but the obligation with respect to interstate shipments is not different at those points than at Cairo.

No. 7969.¹

NATIONAL POULTRY, BUTTER AND EGG ASSOCIATION
v.
BALTIMORE & OHIO SOUTHWESTERN RAILROAD
COMPANY ET AL.

Submitted January 12, 1916. Decided February 26, 1917.

Prior to March 20, 1915, official classification lines transported dairy products in refrigerator cars, under ice if necessary, at first-class rates for dressed poultry, second-class rates for butter and eggs, and third-class rates for cheese, in any quantity. On that date separate charges in addition to the class rates then obtaining were made effective for "ice and salt furnished" on car lots of 15,000 pounds or more, at the rate of \$2.50 per ton of ice supplied, and at a charge for "refrigeration on less-than-carload shipments" of less than 15,000 pounds, of from 5 to 10 cents per 100 pounds, varying with the amount of the applicable first-class rate per 100 pounds of load for which refrigerator car service, with or without ice, was furnished. The new charges were not suspended; now, upon complaint, *Held*, That the separately established charges of March 20, 1915, effected an increase in the aggregate rate; that the class rates prior to March 20, 1915, included compensation for the refrigeration and refrigerator car service now separately assessed; and that the propriety of the rates resulting in increased charges is not established of record.

M. S. Hartman, W. F. Bennett, and W. B. Quarton for National Poultry, Butter and Egg Association.

H. D. Driscoll for Kansas Carlot Egg Shippers Association.

S. D. Rice for Merrell-Soule Company.

F. M. Elkinton and S. J. Bolton for Cheese Dealers Association Company.

C. E. Childe for Hanford Produce Company.

¹ The proceeding also embraces complaints in—No. 7969 (Sub-No. 1), Kansas Carlot Egg Shippers' Association v. Same; No. 7969 (Sub-No. 2), Merrell-Soule Company v. Erie Railroad Company et al.; No. 7988, Cheese Dealers' Association Company v. Baltimore & Ohio Railroad Company et al.; and No. 8265, Hanford Produce Company v. Same.

R. D. Rynder, Dwight N. Lewis, M. Van Persyn, John J. MacDonald, Fred Martin, R. B. Lehmann, J. L. Bowles, Henry W. Sorenson, Thomas A. Somerville, H. C. Barlow, W. B. and S. D. Quarton, John J. Farrell, Thomas G. Baillie, F. D. Currier, James Sorenson, Grant Thornburgh, Frank Schoenfeld, H. K. Chadwick, C. V. Huenke, F. M. Renshaw, Martin H. Meyer, Frank W. Wentz, and B. D. White for Swift & Company and various other interveners supporting complaints.

Wm. W. Collin, jr., for Pittsburgh, Fort Wayne & Chicago Railway Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

Ernest S. Ballard and *D. P. Connell* for New York Central Railroad Company; Michigan Central Railroad Company; and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

C. D. Clark for Baltimore & Ohio Railroad Company and Baltimore & Ohio Southwestern Railroad Company.

M. B. Pierce for Erie Railroad Company and Chicago & Erie Railroad Company.

G. W. Kretzinger, jr., for Grand Trunk Western Railway Company.

N. S. Brown for Wabash Railroad Company and its receivers.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

These cases involve the reasonableness of the present rates and charges for the transportation under refrigeration, within official classification territory, but not between and from points in New England territory, of dressed poultry, butter, eggs, and cheese, collectively known and referred to herein as dairy products. Game was mentioned in the tariffs as first issued along with dressed poultry, but the record contains nothing with particular reference to game. Since the hearing fish has also been included in the tariff. Dairy products have been classified for many years, certainly since the publication of official classification No. 1, in 1887, as follows:

Dressed poultry	First class.
Butter	Second class.
Eggs	Second class.
Cheese	Third class.

These ratings are named for less-than-carload lots, and carload ratings have never been applied to this traffic. These commodities have been handled throughout this period on what in practice are any-quantity class rates.

Prior to March 20, 1915, the defendants herein, which were named as representative of all lines in official classification territory, absorbed all refrigeration charges incident to the transportation of

dairy products. Tariffs effective on that date canceled the rules under which such absorption had been made, and named separate refrigeration charges to be thereafter added to the class rates. Suspension of that cancellation was denied. The separate charges for refrigeration service were provided by rules reading as follows:

The expense of refrigeration must be borne by the consignor or consignee of the property, and when same is furnished by the carrier it will be supplied subject to the following rules and charges.

RULE 1.—Furnishing refrigerator cars to be iced by shipper or carrier.

(a) When the carriers furnish refrigerator cars for perishable freight to be iced by shipper or carrier at point of origin or in transit, for loading by one shipper and consigned to one destination (except as provided in rule 3), freight charges will be assessed as follows:

The rate from first point of origin to final destination will be applied on actual weight loaded at all points of origin, but the minimum weight charges will not be less than 15,000 pounds.

(1) On butter, cheese, eggs, dressed poultry, fish, and game, in straight or mixed lots, on basis of minimum weight of 15,000 pounds (except as provided above), any deficiency in weight necessary to make up minimum of 15,000 pounds to be charged for at the rate applicable to the highest rated article in the car. (See illustrations.)

(2) For other perishable freight on basis of carload minimum and carload rate as per governing tariffs.

RULE 2.—Ice and salt furnished by carriers.

(a) When carriers upon request furnish ice for carload traffic or for butter, cheese, eggs, dressed poultry, fish, and game in lots of 15,000 pounds or more and it is practicable to do so, same will be furnished and charged for at the rate of \$2.50 per ton of 2,000 pounds (except at Ohio River crossings) for the actual weight of the ice supplied, which charge will also include the cost of the labor and salt. Fractions of tons of ice supplied will be charged for proportionately and such charge will also include the cost of the labor and salt.

RULE 3.—Refrigeration charges on less carload shipments.

(a) On shipments of butter, eggs, cheese, dressed poultry, fish, and game, in lots of less than 15,000 pounds, except as provided in rule 2, also on less-than-carload shipments of other perishable freight for which refrigerator car service (with or without ice) is furnished, the following charges, subject to actual weight or published estimated weight, will be assessed for such service in addition to freight charges, except that the minimum refrigeration charge per shipment will not be less than the charge for 100 pounds:

When first-class rate in cents per 100 pounds is—	Charge in cents per 100 pounds for refrigerator car service will be—
50 and less.....	5
Over 50 to and including 60.....	6
Over 60 to and including 70.....	7
Over 70 to and including 80.....	8
Over 80 to and including 93.....	9
Over 93.....	10

In this report we shall refer to shipments of 15,000 pounds and upward as car lots; and to other shipments as less-than-carload shipments.

The National Poultry, Butter and Egg Association, complainant in No. 7969, is a corporation, not for profit, organized to secure, among other things, the maximum efficiency in the conservation of dairy products in transit. The business of its members consists principally in buying, selling, and distributing poultry, butter, eggs, and cheese, and incident thereto the shipping of those commodities in interstate commerce between points in official classification territory and between points without and within that territory. Complainants in the cases consolidated are engaged, or represent shippers engaged, in the dairy industry or some branch thereof.

The complainants contend that the class rates which were effective for 27 years prior to the increase which followed *The Five Per Cent Case*, 31 I. C. C., 351, 613, were, at the time of that increase, already too high as compared with the rates on other commodities; that with the added burden of the separately stated refrigeration charges they are now unjust and unreasonable; and that the cost of the service of refrigeration has always been included in the class rate, being a necessary part of the transportation service for these commodities, and so considered by the carriers in determining their classification ratings. They further allege that during that period an enormous increase in the movement, together with heavier loading, has diminished the cost of service to the carriers and increased their net revenues from the traffic; that modern and advanced methods of precooling, packing, and shipping dairy products have reduced the cost of refrigeration and the loss and damage in transit; and that the producers and shippers of dairy products are entitled to lower rates in proportion to the decreased cost of transportation.

The complaint of the Kansas Carlot Egg Shippers' Association specifically prayed for the establishment upon dairy products of a carload rate lower than the present any-quantity rate. This prayer was withdrawn by this complainant and will not be considered herein. In the complaints filed by the Merrell-Soule Company and the Hanford Produce Company demands for reparation were included, but consideration of this question was deferred pending decision upon the general issues.

The carriers assert that the increases involved in these cases are not "increased rates" within the meaning of section 15, and that the burden of proof therefore rests entirely upon the complainants. The carriers' real defense is that the class rates for the transportation of dairy products are reasonable for the service of carriage alone; that they have never included compensation to the carriers for re-

frigeration service; and that the separate refrigeration charges published and filed by them are not only reasonable for the service performed, but are generally less than actual cost thereof to the carriers.

The carriers also point out that in *The Five Per Cent Case, supra*, at 409, refrigeration service is mentioned as one of the means of obtaining increased earnings which the carriers may have overlooked. In that connection, however, we may state at the outset that no specific finding was made in that case as to the reasonableness of the class rates then proposed and now effective in so far as applicable to dairy products. And attention is called to the Commission's declaration that—

We have never intended to suggest that an additional charge would be proper for services which by long continued general custom and usage have been treated as covered by the line-haul rate. *Car Spotting Charges*, 34 I. C. C., 609, at 617.

The scope of the proceedings and the magnitude of the pecuniary interests involved are reflected in the following list of interveners:

The Iowa Wholesale Egg, Butter & Poultry Dealers' Association; the Ohio Association of Creamery Owners and Managers; Philadelphia Produce Exchange; the Indiana Manufacturers of Dairy Products; Illinois Poultry and Egg Shippers' Association; Michigan Butter and Egg Association; Wisconsin Buttermakers' Association, of Madison, Wis.; State Dairymen's and Butter Makers' Association of South Dakota; National Creamery Butter Makers' Association, including protests from three hundred and thirty-odd creameries, members of the association; Minnesota State Butter and Cheese Makers' Association; Michigan Creamery Owners and Managers' Association; Minnesota State Dairymen's Association; Iowa State Buttermakers' Association; Michigan Dairymen's Association; Swift & Company; the Chicago Butter & Egg Board; Chicago Association of Commerce; National League of Commission Merchants of the United States; New York State Cold Storage Association; Northern and Central New York Cheese Shippers' Association; Pittsburgh Butter and Egg Exchange; Wholesale Grocers' Exchanges of Chicago; the Beatrice Creamery Company; Cincinnati Chamber of Commerce; Cincinnati Produce Exchange; the Fox River Butter Company; the Iowa State Dairymen's Association; Cheese Dealers' Association Company; Hunter Walton & Company; New York Mercantile Exchange; and State Public Utilities Commission of Illinois.

Before canvassing the evidence in this proceeding it is necessary to determine where the burden of proof rests. The carriers argue that in the amendment to section 15, casting upon them the burden of

proof to justify rates increased after January 1, 1910, the word "rate" is used restrictively and includes only the cost of carriage, and not "charges" for services other than of carriage. This latter point it is not necessary to decide. When these carriers on March 20, 1915, withdrew the inclusion of the refrigerator car and refrigeration from the service at the haulage rate, and made a separate charge therefor, they gave and are now giving less service for the same amount of compensation. This is tantamount to increasing the rate for haulage. *Washington, D. C., Store Door Delivery*, 27 I. C. C., 347; *Transit Regulations on Grain and Dried Beans*, 32 I. C. C., 38. The breaking up of a rate for transportation into separate rates or charges for the individual services incident to the transportation is merely a different way of stating the former rate. The burden of proof therefore is upon the carriers to justify as reasonable the basis which was made effective March 20, 1915.

The real issue before us is the reasonableness of the rates for the transportation of dairy products, as increased by the tariff changes of March 20, 1915.

For many years, even before 1887, these commodities have been transported in refrigerator car equipment, which was the regular class of equipment furnished and expected for such transportation. Solicitors for dairy traffic represented to patrons that full refrigeration service was included in the class rates, and the offer of that service was a factor in the competition of carriers for dairy tonnage. Incident to such transportation, icing was contemporaneously performed by the carriers; and neither for the refrigerator car nor for the icing was there any charge named in the tariffs or collected, other than the inclusive class rate for transportation.

In official classification No. 1, effective in 1887, there was contained the following rule:

Railroad companies may furnish ice for property of third or a higher class when loaded in refrigerator or other cars, and the cost of the ice shall be prorated between prorating points; but in no case will a road or line be allowed to bear the expense of icing cars except between prorating points. Shippers must furnish ice, if used, for property lower than third class, carload. No freight will be charged on weight of ice so used.

On September 1, 1913, the rule was reworded to read:

Ice and salt, when required for protection of property, will not be furnished by the railroad companies except as provided for in tariffs of individual carriers.

At this time, so the carriers aver, the tariffs of individual lines showed varying practices.

Finally, on March 20, 1915, came the new rules of the individual carriers naming the separate charges for the refrigerator car and refrigeration service.

It is now argued that the old rule of 1887 created no obligation to furnish ice. The word "may" in that rule is relied on mainly to support this proposition. The rule, however, must be read in its entirety and construed in the light of these carriers' long established practices thereunder.

Since the new adjustment has been in effect and the separate icing charge made, the shipper has received no service that was not furnished him under the former adjustment, when no separate refrigeration charge was made. That former adjustment had been in effect for many years, over 25 at least, without change until following *The Five Per Cent Case, supra*, the class-rate basis was changed so as to augment the total charge.

The fact is that during these many years the class rates included the use of refrigerator cars, icing, and every other element of full refrigeration service incident to the transportation of dairy products. While these defendants may deny the fact as just stated, they do not dispute that prior to March 20, 1915, such services were furnished without additional charge in excess of the class rate, and had been so furnished since their very inception. Their present position is that such services were really gratuitously performed, and were never included in the class rate charged for the transportation. The latter, in their view, was a haulage rate only.

But this view, in the opinion of the Commission, does not bear the test. Its support is mainly derived from the language of carrier made rules contained in their own classifications and tariffs and published continuously in one form or another during these same years when this traffic was solicited and handled as refrigerator car and refrigerated traffic. The carriers' present contention would appear from the record in its entirety to be the defense assumed in the instant case. A contrary position was assumed by certain of these defendants in comparatively recent years when, in endeavoring to support the rate on butter, eggs, and dressed poultry from Omaha to New York, they stated in a joint brief before this Commission:

These rates include icing at the carriers' expense east of Chicago. The present rates have been in effect for some 23 years.

This Commission so found in that proceeding. *Commercial Club of Omaha v. B. & O. R. R. Co.*, 19 I. C. C., 397, at 398.

Great changes have occurred in the location and methods of the dairy industry in the past 25 or 30 years. The changes in location have followed quite naturally the trend of population. In the eighties official classification territory produced much, and in fact nearly all, of the dairy products it consumed. To-day its production is almost all locally consumed, and is insufficient for its needs, but there is a large surplus production in the agricultural territory

which centers at Chicago. Principally this surplus is in the states between Chicago and the Rocky Mountains. In that region the production of dressed poultry, butter, eggs, and cheese has increased greatly in the last 25 years. The increase has not been uniform, however, in all those states, nor has it been uniform as to the different dairy products. Wisconsin, Iowa, and Minnesota are the great butter-producing states, and Wisconsin produces by far the greatest tonnage of cheese. Dressed poultry and eggs come in great quantities from practically the entire territory, with Illinois, Iowa, and Missouri furnishing the larger part. As much as 65 to 85 per cent of the surplus dairy production of many of the states west of Chicago moves into that city and the greater portion of it to the east thereof. Sixty-five per cent of Minnesota creamery butter is said to find its way to New York City.

The transportation of dairy products is now, therefore, for markedly longer distances, longer by far than was the case when the present classification basis was established. Representatives of large shippers in the territory of surplus production state that the average distance of movement would be from 1,000 to 1,500 miles. More than half of the butter and eggs of one concern originally destined to Chicago is in fact reshipped at that point to the east. Another large producer states that 60 per cent of the egg movement to market would be to destinations east of the Pittsburgh-Buffalo line. The carriers' statistics show that the average haul of these products on shipments originating east of Chicago is 846 miles. The movement of dairy products as a whole is fairly regular month by month.

For the long haul to market these commodities are usually assembled at concentration points where there are located branch houses of the larger producing shippers, and from such concentration points the movement is now mainly in car lots. Car-lot shipments make up the greater volume of dairy tonnage, although the less-than-carload shipments are the more numerous. But these latter do not by any means move direct to destination as originally loaded. The practice of the carriers is to assemble less-than-carload quantities of dairy products or of some one particular dairy product into solid cars consigned to one destination or group of destinations on one direct line. This is very extensively done at St. Paul, Minn., and at Chicago.

The change in methods in the dairy industry has resulted in the better preparation of dairy products for transportation. This has been accomplished largely within the past 20 years mainly through the producer-shippers' practice of precooling the products, and the greatest advances have been during the last 10 years.

The cooling of dairy products, involving their being precooled for transportation, is done at the expense of the producer-shipper at

the large points of concentration. Its primary aim is the conservation of the products by the elimination or reduction of the danger of deterioration and decay, especially during transportation. If there was any precooling 20 years ago it was almost negligible. Latterly, and particularly in recent years, precooled products of the kind here involved are the rule rather than the exception. Practically all butter is precooled, much of it to zero, the remainder to about freezing. Eggs, which years ago were not only shipped warm, but loaded tight, are now subjected to precooling more and more each year; it is estimated that in one important territory of production fully 60 per cent are now precooled, and the quantity is increasing fast each year. Not only is the precooling of dressed poultry becoming more general, but the tendency to-day is to freeze hard and to pack dry for shipment instead of packing in ice, i. e., with ice in the individual package, as was the practice years ago. Even cheese, which in winter requires protection from freezing, is for shipment in other seasons precooled to just above freezing.

Obviously, less ice is necessary to conserve in transit a precooled shipment than would be necessary were the identical goods not precooled. Butter precooled to zero contributes to the conservation of the load much more than its own weight of ice. Frozen poultry really contributes the equivalent of its own weight of ice to the initial refrigeration. The conclusion is inevitable that precooling reduces the cost of icing the vehicle of transportation.

But precooling in addition to improved packing and shipping methods has accomplished more than this. It has directly reduced the claims for loss and damage in transit, especially on the car-lot movement. This is the uniform testimony of the shippers, although no statistical comparisons of annual results in this respect were offered by any of the parties to this proceeding. It also appears that in the last six or eight years shippers of dairy products have begun the practice of precooling the cars.

Despite the fact that the rates on this traffic are any-quantity rates, the proposed refrigeration rules are such as would ordinarily be applicable to carload traffic. Thus a shipper loading a minimum of 15,000 pounds or paying on that minimum to one destination is entitled to a refrigerator car solely for his shipment, and pays for ice and salt only when it is used, and then at the rate of \$2.50 per ton of ice furnished.

An individual refrigerator car is not allotted to shipments of less than that minimum and charges are assessed for refrigerator car service, whether under ice or not, the charges being graduated according to the magnitude of the first-class rate between the points of haul. Furthermore, shippers load and consignees unload the car

lots of 15,000 pounds and upward, and there are other features of the service which stamp such loads as ordinary carload business.

The usual run of car lots of butter is 300 tubs, or 21,000 pounds. For eggs the car lot is usually 400 cases, or 21,200 pounds, although in some instances the trade takes cars of 300 cases. Ten years ago the car-lot unit was 200 cases, or 10,600 pounds. Fully 70 per cent of the cheese shipments out of Wisconsin will run over 15,000 pounds, and frequently load 40,000 to 50,000 pounds. The dairy shipments of the larger producers will as a whole average more than 20,000 pounds, and this is especially the case with such shippers as handle dressed poultry, which, frozen, usually loads up to 40,000 pounds. The carriers' statistics show that the car-lot movement of all dairy products averaged about 20,000 pounds. The through less-than-carload trade in dairy products is mostly confined to butter. From the smaller creameries, butter shipments will run in the height of the season from 125 tubs up; and 60 tubs would be an average throughout the season for creameries of that class. Those shipments, however, are as a rule ultimately concentrated.

The tendency in recent years has been to much heavier loading per car, and this is true not only of the car-lot shipments as such, but of the cars of less-than-carload lots consolidated by the carriers themselves. The increase in the average car lot has been occasioned somewhat by the fact that the carriers have increased the minimum quantity required for an individual car from 10,000 to 15,000 pounds. One witness, experienced in the dairy business from both the shippers' and carriers' standpoints, gave it as his opinion that in the last five years the average weight of dairy products loaded in a refrigerator car has almost doubled, and that at the present time it would average 20,000 pounds. The testimony of practically all shippers is to the same general effect, and the tendency now is constantly to heavier loading.

The great majority of shipments made by members of complainant associations from west of the Mississippi River is in car lots. Almost all shipments of eggs from that territory to eastern markets are of that character. One concern which ships 75,000 tons of dairy products annually into official classification territory ships 80 per cent in car lots.

It also appears that in the tonnage of food products moving through the Chicago gateway from the west to the east there is a steady increase in dairy products, while that of dressed meats and live-stock tonnage has decreased.

Dressed poultry requires ice 12 months in the year, and salt is added during practically 9 months. Beginning in the early spring cars loaded with poultry are usually iced to capacity and this con-

tinues throughout the warm season. During the winter months half capacity icing is the usual rule.

It has already been stated that most of the shipments of butter are precooled, not infrequently to zero. Such shipments require no ice except in warm weather. Some shippers begin to order ice about the 1st of April and continue that practice through November, the amount ordered varying according to temperatures. On butter moving from producing territory east of Chicago ice is used for not more than six months in the year.

Eggs are shipped under ice as soon as warm weather begins, generally along in the middle of March, and icing is continued until some time in November. Freezing in transit must be guarded against in winter, and refrigerator cars are then used in order to protect against cold.

Cheese requires less icing than the other dairy products, and sometimes is given heated car protection in the winter. Ice is used only through the hottest weather, and is usually applied commencing in June.

The refrigeration service required, as noted above, will vary somewhat with seasonal temperatures. But, inasmuch as the rates formerly in vogue which included this service were applied throughout the year irrespective of varying temperatures, we are constrained to believe that the rates imposed must have been based upon a consideration of average conditions. In the absence of complaint over rates based on average conditions, we do not feel that it is incumbent upon us at this time to impose upon the carriers the requirement that the charges for refrigerated service shall vary with the specific temperatures encountered during the movement of particular shipments.

Dressed poultry is the most perishable of the dairy products and requires a car suitable for the carriage of dressed beef. For dressed poultry the larger shippers reject a refrigerator car which can not be precooled to below 35 degrees Fahrenheit. On shipments of butter and eggs, and cheese as well, temperatures of 38 to 48 degrees are counted safe, and can usually be secured with cake ice. One witness experienced in the transportation of dairy products and the preparation of such products for transportation stated that the actual cost of refrigerating eggs for transit is not over 50 per cent of the cost of refrigerating dressed beef.

Refrigerator cars, for whose use in transporting dairy products a specific charge is imposed, vary greatly in type and efficiency. In connection with the transportation of dairy products, the United States Department of Agriculture has made extensive tests of the efficiency of this type of cars on hauls of from 1,000 to 1,500 miles. The general conclusion deduced by that department from those

experiments is that the builders of refrigerator cars have not kept pace with the refrigerating industry in general. Practically all the principal dairy-carrying lines hold different views as to the icing requirements for that particular traffic.

The master mechanic of one of the larger defendant carriers admitted that none of the cars of his company assigned to dairy service can be refrigerated to 33 degrees, the temperature required by one of the principal meat packers for shipments of dressed beef. This is of significance in connection with the contention of large shippers of dressed poultry that that commodity requires a car suitable for dressed beef, and in connection with the contention of the carriers that in order of susceptibility to deterioration the three meat foods rank—fish, fowl, and flesh.

There is no standard of insulation required for a refrigerator car for either dressed poultry, butter, eggs, or cheese, or for dairy products as a whole. Indeed there is no standard of efficiency whatever in refrigerator cars. Shippers complain that cars are sometimes received with every outward semblance of being modern and efficient, are loaded upon that presumption, and are found upon arrival at destination to have been merely old cars freshly painted and with exterior repairs, but with obsolete and inefficient insulation.

Lack of exact information as to the age of the car or the exact character of its insulation and its resultant ability to withstand heat leaves the shipper in the position where to be safe he must order excessive icing. Extravagant icing was the rule when the shippers first encountered the necessity of ordering icing service, with the advent of the new rules here attacked. On one of the western lines serving the territory of surplus dairy production it has been found that a new series of cars with only 8,000 pounds of ice bunker capacity is a much more efficient refrigerator than is another series of cars with a bunker capacity of 12,000 pounds. The inference of the shippers naturally is that the newer cars have the benefit of a newer and more efficient insulation.

Compared with a companion box car of the same exterior dimensions the refrigerator car is heavier and has less interior capacity, but costs more to construct and keep in repair. The excess cost of construction and repairs varies with the different lines and with the different types of refrigerator cars, and there appears also to be a lack of uniformity in the relative increase in the excess of the construction cost. Apparently this reflects the policy of the different roads as to increasing the efficiency of the refrigerators.

Refrigerator cars require special cleaning, and at times extraordinary cleaning to remove the effect of odor of a previous load. The cost of cleaning varies on the different lines, as does also the percentage of cars requiring cleaning. Ordinarily the cost runs from

about 19½ to about 50 cents per car; for the extraordinary cleaning one line reports 13 per cent of its cars necessitating an average expense of \$2.95; on another road it was only 63 cents per car.

In addition to hauling greater tare weights in refrigerator cars, the empty haul of such cars exceeds that of box cars. This empty mileage is augmented by the movement to icing stations for icing, and the subsequent movement under ice to point of loading.

We have already commented on the maintenance of classification ratings dating from 1887 applicable on the any-quantity movement of first class on dressed poultry, second class on butter and eggs, and third class on cheese.

In classification the perishable foods are ordinarily grouped under fruits, fish, meats, and vegetables. Dressed poultry competes with the other food products, particularly with dressed meats. In some sections cheese is a substitute for dressed meats and poultry. In the eastern markets dressed poultry competes with live poultry.

The classification rating reflects, among other things, perishability and other attendant hazards in transportation, value, and minimum weight of loading. Generally the classification rating is said to reflect only the service of haulage; auxiliary services incident to transportation are said by the carriers not to be considered in determining classification rating; and icing and the necessary use of refrigerator car equipment as auxiliary services would not be factors therein; nor would volume of movement. But it is admitted that when fixing the classification the carriers' committee knew no separate charge was made for refrigeration.

It is asserted by the shippers of dairy products that there is no extraordinary hazard in the transportation of such articles as now shipped, sometimes frozen hard and, if not, quite generally pre-cooled. Their practice of insisting on a car suitable for dressed beef for their shipments of dressed poultry, and not for butter, eggs, or cheese, is an indication of their view as to the comparative susceptibility of these products to transportation hazards. Breakage of eggs is avoided more and more each year as a result of better methods and greater care in packing and loading. Ordinarily a day's delay in the transportation of dairy products is no cause for complaint. While both carriers and shippers seem to agree that in susceptibility to deterioration in transit dairy products rank as follows: dressed poultry, eggs, butter, and cheese, the carriers contend that, revenue considered, claims on account of perishability are greater on dressed poultry than on fresh meats. Presumably, however, this is so mainly because the claims are the greater on the less-than-carload lots, for the carriers admit that if a carload classification were established for dressed poultry it could well be the same as for

fresh meats, although they are careful to say that in such case they would desire to rate fresh meats higher.

Once established, the classification rating seems, in the carriers' view, a finality. Any extraordinary change in the volume of movement is considered a rate question and not one of classification. Seemingly their view also is that if subsequently any progress be made in reducing the loss and damage incident to the transportation no change in classification ratings is called for, because the carriers are entitled to the saving.

Since the establishment of these classification ratings there have come those changes in the dairy industry, already referred to, from which there have resulted great increases in the tonnage of dairy products, in the length of haul, in the number and weight of car-lot shipments, and in the better preparation of the articles for transportation. These have been gradual over many years, and undoubtedly have had some effect on transportation costs, certainly not to the carrier's detriment. But in the past few years there have also come rate changes which have directly increased the carriers' revenues on this traffic.

Prior to February 1, 1913, the shipper of 10,000 pounds or more of dairy products to one consignee and destination was given the sole use of a refrigerator car for that lot. On that date the requisite minimum was made 15,000 pounds. Subsequently there came the advances in the class rates incident to *The Five Per Cent Case, supra*, and these were followed on March 20, 1915, by the separately established refrigeration charges. The result of these successive rate changes has been to increase the carriers' revenue per car lot from Chicago to New York, as follows:

	Dressed poultry.		Butter and eggs.		Cheese.	
	Prior to Feb. 1, 1913.	Subsequent to Mar. 20, 1915.	Prior to Feb. 1, 1913.	Subsequent to Mar. 20, 1915.	Prior to Feb. 1, 1913.	Subsequent to Mar. 20, 1915.
Transportation, 10,000 pounds.....	\$75.00	.....	\$65.00	.....	\$50.00	.....
Haulage, 15,000 pounds.....	.....	\$118.20	.....	\$102.45	.....	\$78.75
Refrigeration (average).....	.....	16.00	.....	16.00	.....	16.00
Total.....	.....	134.20	.....	118.45	.....	94.75

Another way of expressing this is that while the carriers formerly absorbed the icing out of minimum car-lot revenues of \$75 on dressed poultry, \$65 on butter and eggs, and \$50 on cheese, they now refuse so to absorb while assessing for haulage alone \$118.20, \$102.45, and \$78.75, respectively, per car lot of those commodities. This increased car-lot revenue must be read in the light of the fact that the great tonnage movement is now increasing in such lots; also, that the

average car lot will weigh 20,000 pounds. On the 20,000-pound basis the car-lot revenue for hauling dressed poultry or butter and eggs from Chicago to New York is greater by about \$46 and \$23, respectively, than what would be earned for the same service on fresh meats.

But meantime the 5 per cent increase in the class rates, coupled with the new scale of refrigeration charges on less-than-carload lots, has effected a considerable increase in revenues on that traffic, whether carried under ice or not. These increases are particularly marked on the short hauls, but they are high even on the longer hauls. The following statement shows the extent of such increases per 100 pounds transported from Chicago to the destinations shown:

From Chicago to—	Dressed poultry.			Butter and eggs.			Cheese.		
	Prior to 5 per cent advance.	Subsequent to Mar. 20, 1915. ¹	Per cent increase in aggregate.	Prior to 5 per cent advance.	Subsequent to Mar. 20, 1915. ¹	Per cent increase in aggregate.	Prior to 5 per cent advance.	Subsequent to Mar. 20, 1915. ¹	Per cent increase in aggregate.
	Cents.	Cents.		Cents.	Cents.		Cents.	Cents.	
Hammond, Ind.....	10.5	11.0 5.0	52.4	10.0	10.5 5.0	55.0	9.0	9.5 5.0	61.1
Indianapolis, Ind.....	31.5	32.1 5.0	20.9	27.0	28.4 5.0	23.8	21.5	22.6 5.0	28.4
Cleveland, Ohio.....	41.0	43.1 5.0	17.3	34.0	36.8 5.0	25.1	28.0	27.3 5.0	24.2
Pittsburgh, Pa.....	45.0	47.3 5.0	16.2	39.0	41.0 5.0	18.0	30.0	31.5 5.0	21.7
Washington, D. C.....	72.0	75.8 8.0	16.4	62.0	65.3 8.0	18.2	47.0	49.5 8.0	22.3
Baltimore, Md.....	72.0	75.8 8.0	16.4	62.0	65.3 8.0	18.2	47.0	49.5 8.0	22.3
Philadelphia, Pa.....	73.0	78.8 8.0	16.2	63.0	66.3 8.0	18.0	48.0	50.5 8.0	21.9
New York, N. Y.....	75.0	78.8 8.0	15.7	65.0	68.3 8.0	17.4	50.0	52.5 8.0	21.0
Boston, Mass.....	82.0	85.8 9.0	15.0	71.0	74.3 9.0	17.8	55.0	57.5 9.0	20.9

¹ First figure is haulage rate; second is refrigeration charge.

It seems to be accepted that there is greater economy in the transportation of these articles in car lots. But in this connection there must be borne in mind the methods by which the less-than-carload business is handled. It has already been said that the carriers make a practice of consolidating at Chicago and points west less-than-carload shipments from the west to eastern destinations. This results in greater economy in transportation, for such cars can then be handled so far as physical movement is concerned, as are car lots. As to such cars the official classification lines perform no pick-up service.

The less-than-carload business originating within official classification territory usually moves east and, as a rule, begins in pick-up cars. Such cars for dairy products are ordinarily scheduled as soon as there is sufficient business in sight to warrant, the volume of business determining the frequency of the service. The carriers

recognize that some of these products, dressed poultry, for instance, will require icing throughout the year, while others will require it only at certain seasons; also, that the duty devolves upon them properly to protect all shipments of perishables. But the tonnage is seldom enough to warrant the running of iced and noniced refrigerator cars, and when the pick-up cars begin their run it is not known just what lading will be offered. Necessity, therefore, requires that all pick-up cars be run under ice, and the carriers consider it just to assess the expense thereof against all commodities loaded therein. Furthermore, these carriers feel they are entitled to compensation for the protected service of the refrigerator car. The load is usually a mixture of all dairy products, although occasionally a pick-up car comes through with but one product. The customary practice is not to run such cars beyond division points without consolidation. On one line for which statistics were presented the pick-up loads carried into the consolidation points ran from 7,000 to 10,000 pounds.

The very nature of pick-up service necessitates a slower schedule than is accorded the through car lots, and requires frequent opening of the pick-up car. Relatively more ice is necessary for its proper refrigeration; nevertheless, the pick-up car usually maintains a higher temperature than the through car because of the incidents of the service. In a way the comparative inefficiency of the refrigeration of the pick-up car tends to discourage the small shipper from precooling, for precooled products should be carried during transportation at a temperature as near as possible to that of the cooling room. This is not possible with the average pick-up car service.

In southern classification territory dressed poultry usually moves on fresh meat rates, and the same is true in transcontinental territory. Straight or mixed carloads of dairy products, minimum weight 20,000 pounds, are rated third class in western classification territory, but it was testified that many of the rates on such traffic are made from 1 cent to 15 cents lower than the third-class rates. In the same territory dressed poultry, less than carload, is rated first class, and butter, cheese, and eggs second class. All such less-than-carload rates in western classification territory include refrigeration service.

Measured by the test of revenue return per ton-mile of service the present haulage rates on dairy products in official classification territory are high. Considering them in their applicability to carload business merely emphasizes the relative return. The statement below shows this as to traffic Chicago to New York, 912 miles.

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Commodity.	Rates per 100 pounds.	Return per ton- mile.
	Cents.	Mills.
Apples.....	31.5	6.91
Pears.....	31.5	6.91
Quinces.....	31.5	6.91
Potatoes.....	31.5	6.91
Packing-house products.....	31.5	6.91
Cranberries.....	36.8	8.07
Cantaloupes.....	36.8	8.07
Watermelons.....	36.8	8.07
Bananas.....	52.5	11.51
Oranges.....	52.5	11.51
Lemons.....	52.5	11.51
Pineapples.....	52.5	11.51
Grapes.....	68.3	14.98
Dressed poultry.....	78.8	17.28
Butter and eggs.....	68.3	14.98
Cheese.....	52.5	11.51

Considering the rates on dairy products as moving car lots of a minimum weight of 15,000 pounds, and average loading of 20,000 pounds, the return to the carriers for haulage per car-mile, Chicago to New York, compares with the returns on the other foods named as follows:

Commodity.	Mini- mum. weight.	Rate per 100 pounds.	Return per car- mile.
	Pounds.	Cents.	Cents.
Apples.....	24,000	31.5	8.20
Pears.....	24,000	31.5	8.20
Quinces.....	24,000	31.5	8.20
Potatoes, Oct. 1 to May 31.....	36,000	31.5	12.43
Potatoes, June 1 to Sept. 30.....	30,000	31.5	19.26
Packing-house products.....	30,000	31.5	19.26
Cranberries.....	24,000	36.8	9.68
Cantaloupes.....	24,000	36.8	9.68
Watermelons.....	24,000	36.8	9.68
Bananas.....	18,000	52.5	10.36
Oranges.....	24,000	52.5	13.83
Lemons.....	24,000	52.5	13.83
Pineapples.....	20,000	52.5	11.51
Grapes.....	20,000	68.3	14.98
Dressed poultry.....	15,000	78.8	12.96
Do.....	20,000	78.8	17.28
Butter and eggs.....	15,000	68.3	11.23
Do.....	20,000	68.3	14.98
Cheese.....	15,000	52.5	8.63
Do.....	20,000	52.5	11.51

¹ Average actual loading dairy products.

There are no through rates from western into official classification territory on dairy products, and east of the river or Chicago the traffic pays full locals in combination. In the case of the Wabash Railroad carload rates apply up to the Mississippi River; east thereof on the same road the same shipment will take an any-quantity rate and pay refrigeration charges in addition.

Because the great car-lot movement of dairy products is on local rates from Chicago east on goods originating beyond, it seems proper to compare the revenue result of such traffic per minimum car lot with the minimum carload revenue between the same points on other

foodstuffs originating beyond. We do not overlook the contention that this is a comparison of revenue results from local rates on dairy products and fresh meats with revenue results from divisions of rates on other foodstuffs, but we repeat that the circumstances surrounding the traffic makes the comparison of value. Such a comparison follows below :

From Chicago to—	Dressed poultry, 15,000 pounds.	Butter and eggs, 15,000 pounds.	Cheese 15,000 pounds.	Fresh meats, 21,000 pounds.	Apples, 30,000 pounds.	Vegetables, 20,000 pounds.	Citrus fruits, 26,700 pounds.
Pittsburgh, Pa.....	\$70.95	\$61.50	\$47.25	\$52.64	\$75.00	\$57.50	\$76.76
Baltimore, Md.....	113.70	97.95	74.25	93.45	75.00	62.50	76.76
Philadelphia, Pa.....	115.20	99.45	75.75	95.55	75.00	62.50	76.76
New York, N. Y.....	118.20	102.45	78.75	99.75	75.00	62.50	76.76
Boston, Mass.....	128.70	111.45	86.25	99.75	75.00	62.50	76.76

We find that the charges for carriage to which are added the stated refrigeration charges have not been shown of record to be just and reasonable and must therefore be canceled. An order will, therefore, issue requiring the cancellation of the charges separately established March 20, 1915, for the refrigeration and refrigerator car service, and the restoration of the rate basis effective just prior thereto. Further hearing will be had on formal claims filed for reparation.

There was very comprehensive evidence offered by the carriers in attempted justification of their present charges of \$2.50 per ton of ice used in icing car-lot shipments, and 5 cents and upward, per 100 pounds of load, according as the first-class rates run, for refrigerator car service with or without ice on less-than-carload shipments. Our disposition of the case makes unnecessary any finding as to the reasonableness of those charges, *per se*, or as to discrimination against the less-than-carload shipments in that the charge thereon applies whether or not the car is iced. It was on this latter point that the carriers evidenced the necessities of pick-up car service in the dairy traffic as justification, and showed that the basis of the graduated scale of charges was the average cost of icing car lots at the rate of \$2.50 per ton of ice used between Chicago and New York.

We think it desirable that it be pointed out that the less-than-carload charge is not restricted to tonnage handled in pick-up cars. It is laid, according to the tariffs, "on shipments of butter, eggs, cheese, dressed poultry, fish, and game in lots of less than 15,000 pounds, * * * also on less-than-carload shipments of other perishable freight for which refrigerator car service (with or without ice) is furnished." Consolidated shipments of dairy products not requiring and sometimes not receiving icing, are assessed with these charges;

so are shipments of cheese or canned goods for which refrigerator car service is requested in winter months for protection against frost. It was testified by a witness for the carriers that the movement in refrigerator cars dry was negligible. It was partly on account of such movement, however, that the Wholesale Grocers' Exchange of Chicago intervened. As to dairy products its intervention was proper; as to canned goods it was beyond the issues here involved. No finding is here made as to the propriety of these charges when laid against canned goods.

MEYER, *Chairman*, did not participate in the disposition of this case.

HARLAN, *Commissioner*, concurring:

The comparisons shown on the report of the Commission are not, in my judgment, a sufficient test of the intrinsic reasonableness of the rates considered in the report; they take into consideration neither the average loading of the other commodities nor the separate charges for refrigeration at present maintained on many of them. It is true that the rates, for carriage only, on certain perishable foods such as meats, fruits, and vegetables make the present rates for the carriage of dairy products seem relatively high. But the report, as should be noted, finds that the defendants have failed, by the precise measure of the separately established refrigeration charge, to show that the present aggregate charge, for both carriage and refrigeration, is reasonable; and it requires the rates, now assessed for carriage only, to stand for the future as the rates for both carriage and refrigeration.

The record indicates, and the report states, that during a large part of the year eggs and cheese are moved without any ice or salt at all, and that during the winter months "half capacity icing is the usual rule" in the transportation of dairy products. In other words, in requiring the restoration of the old rates the Commission proposes for the future to impose on this traffic the same rate throughout the entire year, thus requiring the shippers of eggs and cheese to pay for the refrigeration service during the winter months, when the service is not required or actually used; during the same part of the year the dressed poultry shippers will be required to pay a rate that includes a refrigeration charge for a service 100 per cent greater than the refrigeration service needed and actually rendered.

I am at a loss to see how such rates may properly be sanctioned. The inference drawn in the Commission's report, even if justified by the record, that the old rates represent "average conditions" through-

out the year, does not relieve but rather gives emphasis to the objection to them; for that view seems frankly to concede that those who ship only when refrigeration is not required must nevertheless pay the carrier for a service not rendered, while others shipping only during periods of the year when refrigeration is necessary and actually performed may lawfully pay less than they should. With our approval the burden is thus transferred, in part at least, from those who enjoy the service and should pay for it to those who do not require the service or actually have it performed for them.

The report illustrates with unusual clarity the inequalities which, as I have had frequent occasion to point out, necessarily spring from rates that are said to include compensation to the carrier for a special service that is actually used by some of the shippers only, or, if used by all shippers, only during a part of the year. In either requiring or permitting the reestablishment of the old rates the Commission, in my judgment, gives countenance to an impropriety in rates that is open and apparent on the very face of the record. While I do not care to interpose any individual view of my own as to the sufficiency of the evidence offered by the defendant carriers to meet the burden of justifying their present rates and charges and am therefore willing to be understood as concurring in the finding that they have failed by adequate evidence to sustain their contentions, I am not willing to give my assent to the restoration of rates on this traffic that involve an obviously unequal adjustment.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 756.
COAL TO GLENCOE, MO.

Submitted September 14, 1916. Decided March 13, 1917.

Former finding that respondents had justified proposed increased rates on bituminous coal in carloads from mines on the St. Louis, Iron Mountain & Southern Railway, in Illinois, to stations on the Missouri Pacific Railway, in Missouri, affirmed on rehearing.

C. E. Warner for Missouri Pacific Railway Company and its receiver.

R. U. Carter for protestant.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION :

This case was originally decided May 2, 1916, 39 I. C. C., 190. By schedules, filed to take effect December 15, 1915, respondents, the Missouri Pacific Railway and the St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, proposed to increase their joint rates on bituminous coal in carloads from mines on the Iron Mountain in the so-called outer group in southern Illinois to Glencoe, Mo., 27 miles west of St. Louis, Mo., and to 14 other stations intermediate to Glencoe from St. Louis on the Missouri Pacific. The proposed increase to Glencoe was from \$1 to \$1.20 per short ton. Upon protest by the Glencoe Lime & Cement Company the schedules were suspended until October 13, 1916, and a hearing was had. We found that respondents had justified the proposed rates and the order of suspension was accordingly vacated as of July 1, 1916. The rates originally suspended are now in effect. The proceeding was reopened at the request of the protestant and a rehearing was had. Rates are stated in amounts per short ton.

The history and method of constructing the rates in question were detailed in our former report. Briefly stated, coal mines in Illinois east of St. Louis are divided for rates on westbound traffic into two groups known as the inner group and the outer group. Rates from these groups to points in Missouri are made by adding the rates beyond East St. Louis, Ill., to a proportional rate of 25 cents from the inner group to East St. Louis and a proportional rate of 40 cents from the outer group. The rates beyond East St. Louis are composed of a charge of 20 cents per ton for transportation across the Mississippi River, and the local rates from St. Louis to destination. Prior to the increase in the rates here in question

the rates to points on the Missouri Pacific in Missouri from both the inner group and the outer group were made on the usual basis, except to Glencoe and intermediate points, to which points the rates from the outer group were on a lower basis. The primary purpose of the increased rates was to place Glencoe and intermediate points on a parity with other points on the Missouri Pacific Railway.

At the original hearing protestant based its objection to the proposed rate to Glencoe upon the fact that for several years prior to September 30, 1915, respondents maintained a rate of 90 cents from the outer group to Glencoe, and upon comparisons of the proposed rate of \$1.20 with rates from the outer group to stations in Illinois, and to stations in Missouri on the St. Louis & San Francisco Railroad, hereinafter called the Frisco. On the date named the rate to Glencoe was increased to \$1 following the *1915 Western Rate Advance Case*, 35 I. C. C., 497, 603-611. The rates cited at the former hearing are again urged, particularly rates ranging from 90 cents to \$1.10 to points on the Frisco about the same distances from the outer group mines as is Glencoe, 155 miles; and the rate from the outer group mines to Glen Park, Mo., on the Iron Mountain, 152 miles from the outer group by way of St. Louis. The rate to Glen Park was formerly 95 cents, but was reduced to 80.5 cents on May 1, 1916. Respondents reiterate that the rates to the Frisco points are on the usual basis, but are relatively lower than the rate to Glencoe because of the lower rates maintained by the Frisco beyond East St. Louis, Ill.; and they insist that they are not responsible for the rates on the latter road. The fact that there are relatively lower rates to points on the Frisco would not of itself support a finding that the rates in question are unreasonable or otherwise unlawful.

According to respondents the rate to Glen Park is influenced by the rates to Crystal City and Festus, Mo., contiguous points served by the Frisco and the Mississippi River & Bonne Terre Railway, hereinafter called the Bonne Terre, respectively, and to which points Glen Park is intermediate from mines in the outer group. A number of lead mines and mills are located in the vicinity of Crystal City and Festus and they consume a large volume of coal. Electric power generated by the Keokuk dam is distributed to industries in the territory in which Crystal City is located and it is stated that this has brought about low rates on coal to that territory. Prior to the *1915 Western Rate Advance Case*, *supra*, the rate from southern Illinois mines to Crystal City was 75 cents, but following that decision the rate was increased to 85 cents. It has since been reduced to 80.5 cents. It is stated that the rate to Crystal City was originally established by the Chicago & Eastern Illinois Railroad and the Frisco. For a long time the Iron Mountain participated in the 75-cent rate to Crystal City, but

did not apply this rate to intermediate points. The average short-line distance from mines in the outer group to Crystal City is 102 miles by way of the Iron Mountain, the Illinois Southern Railway, and the Frisco through Flinton, Ill., and Little Rock, Mo. Traffic over this route is ferried across the Mississippi River. The rate to Crystal City also applies by way of Delta, Mo., and the Frisco, an average distance of 196 miles. The rate of 80.5 cents to Crystal Junction and Festus, on the Bonne Terre, applies by way of Riverside, Mo., usually in connection with the Ivory ferry, an average distance of 142 miles. This route is the one customarily used, but at times in the winter it is impossible to operate ferries across the river and consequently this rate to Crystal Junction and Festus is made applicable by way of St. Louis. As Glen Park is intermediate to Crystal Junction and Festus by way of St. Louis, the 80.5-cent rate is also applied to Glen Park.

Protestant also cites a rate of \$1 applied from the outer group mines to Bonne Terre, Mo., a point on the Bonne Terre, but the same competitive conditions exist at Bonne Terre as at Crystal City. The rate on slack coal to Bonne Terre is 85 cents.

Protestant also emphasizes a former rate of 95 cents on coal in carloads from southern Illinois mines to Chicago, about 320 miles. This, however, was a proportional rate; the flat rate was \$1.05. Effective September 1, 1916, these rates were increased to \$1 and \$1.10, respectively, under our decision in *Indiana and Illinois Coal*, 40 I. C. C., 603. From the record it is clear that the Iron Mountain joins in the flat rate primarily for competitive reasons to enable the coal operators on its line to compete with other operators in southern Illinois located on lines having the direct route to Chicago.

Protestant observes that the ton-mile earnings under the \$1.20 rate to Glencoe exceed the average ton-mile earnings on coal of 27 railroads, as shown in *1915 Western Rate Advance Case, supra*, and of 12 railroads as shown in *Indiana and Illinois Coal, supra*. But apparently no consideration is given to the multitudinous and varying influences of competition and the relative circumstances and conditions surrounding the transportation under many of those rates. It is further urged that the rate on coal to Glencoe might well be somewhat lower than the rates to certain other points in the same territory, as each unloaded coal car insures a return load of crushed stone. The mere fact that there is a return movement from Glencoe does not justify the requirement of a lower rate on coal to Glencoe than to other points on the Missouri Pacific. The present rate to Glencoe from the outer group of mines in southern Illinois is now in line with the rates to other points in Missouri on the Missouri Pacific.

After a full consideration of all the facts of record we adhere to our previous findings, and the proceeding will be discontinued.

No. 8541.¹
DULUTH LOG COMPANY
v.
MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILWAY COMPANY ET AL.

Submitted May 25, 1916. Decided March 13, 1917.

Rates on poles and posts transported interstate from Duluth, Minn., to Brooten, Minn., from Remer, Minn., to Benld, Ill., and from Remer and other points in Minnesota, to points in North Dakota, not shown to have been or to be unreasonable. Complaints dismissed.

V. A. Anderson for complainant.

Charles Donnelly, John F. Finerty, and Albert H. Lossow for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in forest products, with its principal office at Duluth, Minn. By complaints, filed between November 22, 1915, and January 20, 1916, both inclusive, it alleges that unreasonable rates were charged by defendants for the interstate transportation of certain carloads of poles, posts, and white cedar fence posts shipped from Duluth to Brooten, Minn., from Remer, Minn., to Benld, Ill., and from Remer and other points in Minnesota to destinations in North Dakota, during the period from November 26, 1913, to December 21, 1914, inclusive. Reparation is asked. Rates are stated in cents per 100 pounds.

The shipment described in No. 8541 originated at Remer and consisted of cedar posts. It moved by way of the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line, to Chicago, Ill., and the Chicago & North Western Railway thence to Benld, a total distance of 880 miles. Charges were collected thereon at the combination rate of 24½ cents legally applicable: 15 cents to Chicago, 9½ cents beyond. Complainant contends that this rate was unreasonable to the extent that it exceeded a joint rate of 22 cents established from and to the points in question over a shorter route by way of Fond du Lac, Wis., on December 15, 1914, after the ship-

¹ The proceeding also embraces complaints in—No. 8473, Duluth Log Company *v.* Minneapolis, St. Paul & Sault Ste. Marie Railway Company, and No. 8541 (Sub-Nos. 1, 2, 3, 7, 8, and 11 to 31, inclusive), Same *v.* Same.

ment moved. The establishment of a joint rate from Remer to Benld over a different route from the route of movement is not enough to condemn the combination rate applicable over the route of movement. *Duluth Log Co. v. M., St. P. & S. Ste. M. Ry. Co.*, 38 I. C. C., 338. We find that the rate assailed in No. 8541 is not shown to have been unreasonable.

The remaining shipments for consideration consisted of white cedar posts and poles. They were moved by the Soo line to Brooten, Minn., and to points in North Dakota. Posts and poles take the lumber rate from and to the points involved. Charges were collected on the shipments at the applicable commodity rates. The issues presented in No. 8541 (Sub-No. 1) are typical of those presented in the other complaints, and it was agreed between the parties that the evidence in Sub-No. 1 should govern as to all of the cases. The shipment described in Sub-No. 1 weighed 35,400 pounds, and moved over the Soo line from milepost 318, near Remer, to Grano, N. Dak., 402 miles. Charges were collected thereon in the sum of \$81.42, at the legal rate of 23 cents. Complainant contends that the rate charged was unreasonable to the extent that it exceeded 12.1 cents, which is said to be the rate for 402 miles between points in Minnesota. Complainant shows that the rates assailed exceeded and exceed the rates prescribed on like traffic for similar distances by the state of Minnesota, under the so-called Cashman scale, and that they are higher than the rates formerly maintained by the Soo line from Larch, Mich., to various destinations.

The Soo line stated that the rates assailed were established in 1910, when it opened its new line from Thief River Falls, Minn., to Duluth, and were made the same as the rates then maintained for equal distances between points in the same territory by its competitors, the Great Northern and the Northern Pacific railways. The witness of the Northern Pacific testified that his company first established rates on poles and posts in the territory involved in 1903, and that its present rates are from 2 cents to 3 cents lower than the original rates. Defendants also explained that the rates from Larch were established for a specific purpose, to meet temporary conditions; that they were unreasonably low; and that they would be increased approximately 6.5 cents. Effective September 1, 1916, the rate from Larch to Grano was increased from 28 cents to 34 cents.

In *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 37 I. C. C., 627, 635, we said:

The Commission has always given due consideration and weight to state made rates, but under the duty imposed upon it by law the Commission must determine the reasonableness of interstate rates from all of the pertinent facts, and can not accept rates prescribed for intrastate transportation as conclusive.

The record discloses that there has been no complaint against the rates on lumber from and to the points in question and that posts and poles load much lighter than do other forest products taking the lumber rate.

We find that the rates assailed are not shown to have been or to be unreasonable, and the complaints will be dismissed.



INVESTIGATION AND SUSPENSION DOCKET No. 873.

HARTFORD & NEW YORK TRANSPORTATION COMPANY
JOINT RATES.



Submitted December 18, 1916. Decided March 13, 1917.



Proposed increased rates on certain traffic between New York, N. Y., and points in Rhode Island on the line of the Rhode Island Company, found justified, and orders of suspension vacated.

S. S. Perry for Hartford & New York Transportation Company.
Clifford Whipple for Rhode Island Company.

George W. Collier for Providence Drysalters Company and Livingston Worsted Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect July 1, 1916, respondents proposed a readjustment of local interstate class and commodity rates between all points served by the Rhode Island Company, hereinafter called the Rhode Island, an electric line operating almost wholly within the state of Rhode Island, and also of through class and commodity rates between all points on the Rhode Island and New York, N. Y., by way of Providence, R. I., and a boat line of the Hartford & New York Transportation Company. It is proposed to increase certain rates and to reduce others. Upon protests of interested shippers the proposed schedules were suspended until October 29, 1916, and later to April 29, 1917.

Two shippers were represented at the hearing, but only one of them is directly interested in the joint rates under suspension; this shipper, Providence Drysalters Company, hereinafter called the protestant, is a corporation engaged in the manufacture of mordants,

colors, extracts, and chemicals at East Greenwich, R. I., on the line of the Rhode Island, 14 miles from Providence. No protest was filed with respect to the proposed local rates between points on the Rhode Island, which rates have been in effect on intrastate traffic since July 1, 1916. But the present through rates were published by the Hartford & New York Transportation Company, hereinafter called the Hartford Company, without the concurrence of the Rhode Island, and the local rates were suspended because out of the through rates the Rhode Island takes its locals to or from the port, and the Hartford Company the balance, so that an increase in the local rates to or from the port, without changing the through rates, would have correspondingly diminished the amount received by the water line.

The following table shows the present and proposed rates between East Greenwich and New York on certain commodities which are typical of the commodities in the transportation of which protestant is interested, rates stated in cents per 100 pounds:

Commodities.	Carload rates.		Less-than-carload rates.	
	Present.	Proposed.	Present.	Proposed.
Dextrino.....	10	12	13	18
Glycerine, in wood.....	14	17	14	22
Glucose.....	9	12	9	17
Castor oil in cans, boxed.....			22	26
Castor oil in wooden or iron drums.....	11	12	11	22
Rosin.....	9	10	9	17
Soda, sulphate (Glauber's salts).....	9	12	9	18
Mineral pulp.....	12	10	12	17

The present and proposed first-class rates are 29 cents and 31 cents, respectively.

Most of protestant's shipments of the commodities here involved are inbound, and are generally in less-than-carload quantities. The Hartford Company testified that the present through rates were established in October, 1912; that for competitive reasons they were made the same as the rates then in effect between Rhode Island points and New York by way of other rail-and-water routes; and that the rates so established are unduly low. The tariff publishing these rates contained numerous commodity rates under which it was stated there was little, if any, movement. Since these rates were established, the rates applicable by way of competing rail-and-water routes have been increased. It is also true that respondents' expenses have increased. In view of these facts, respondents determined upon a general readjustment, and, after investigation, they filed the tariffs here involved. In preparing these tariffs, respondents attempted to fix a reasonable basis of rates and to remove dis-

criminations and inconsistencies. It is proposed to cancel most of the commodity rates because they are not considered remunerative and because the light movement thereunder does not warrant their continuance. It was testified that the proposed through rates are the same as or lower than the rates between Rhode Island points and New York by way of competing rail-and-water routes and that in no instance do they exceed the aggregates of intermediate rates to and from Providence. An examination of respondents' records for the months of March, June, July, and August, 1916, showed that there had been no outbound shipment over their lines from protestant's plant to New York, and that the only inbound shipments from New York consisted of 5,875 pounds of dextrine, 33,195 pounds of glycerine, 52,215 pounds of various kinds of oil, all in less than carloads, and 3 carload shipments of phosphate of soda, aggregating 112,150 pounds.

Protestant asserts that in the past it has been the general practice to make rates between interior Rhode Island points and New York slightly higher than the port to port rates, and it argues that this practice should be continued. But its witness testified in part as follows:

The steam railroad and the water line which they own (referring to the New York, New Haven & Hartford Railroad and a boat line operating from Norwich, Conn., to New York) have made rates which are considerably higher than they have been for a number of years prior to the advance, and that this tariff, I. C. C. No. 26 (which is the tariff naming through rates from Rhode Island points to New York via respondents' lines at present in effect), is the last of the old line of tariffs; and if it is canceled, it will have the effect of increasing the rates paid by the Providence Drysalters Company, and how many other concerns I don't know.

Protestant referred to the Hartford Company's rates between Providence and New York, which are in some instances considerably lower than the joint rates proposed. However, it was not shown that protestant has any competitors at Providence or that any commodities in which protestant is interested were moving under such rates.

We find that respondents have justified the proposed rates, and our orders of suspension will be vacated.

No. 8603.
W. G. CHANEY COMPANY, LIMITED,
v.
OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted March 27, 1916. Decided March 13, 1917.

Charges collected on a carload of cedar poles from Sand Point, Idaho, to Vale, Oreg., not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

W. B. Riddle for complainant.

Hamblen & Gilbert for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the purchase and sale of cedar products, with its principal place of business at Spokane, Wash. By complaint, filed January 17, 1916, it alleges that the rate of 36 cents per 100 pounds charged by defendants for the transportation of one carload of cedar poles shipped on May 13, 1914, from Sand Point, Idaho, to Vale, Oreg., was unreasonable and unjustly discriminatory to the extent that it exceeded the rate of 33 cents per 100 pounds contemporaneously applicable on like traffic from Sand Point to Boise, Idaho. Reparation is asked and the establishment of a rate of 33 cents for the future. Rates are stated herein in cents per 100 pounds.

Sand Point is located in northwestern Idaho and is served by the Spokane International Railway and other carriers. Vale is in eastern Oregon, on the Oregon Eastern branch of the Oregon Short Line Railroad, hereinafter called the Oregon Short Line, and is 517.8 miles from Sand Point by way of defendants' lines. Boise is on the Nampa branch of the Oregon Short Line, 564 miles from Sand Point. The shipment moved by way of the Spokane International Railway to Spokane, Wash., and the Oregon-Washington Railway & Navigation Company, hereinafter called the Oregon-Washington, and the Oregon Short Line thence to destination. No joint rate applied, and charges were collected at a combination rate of 36 cents: 33 cents from Sand Point to Ontario, Oreg., the junction point of the Oregon Eastern branch with the main line, and 3 cents from Ontario to Vale, a distance of 15 miles. Boise is 61.8 miles east of Ontario, and shipments

from Sand Point to Boise by way of defendants' lines move through Spokane and Ontario. Effective July 12, 1916, defendants established a joint rate of 35½ cents on cedar poles, carloads, from Sand Point to Vale, over the route of movement, and this rate is still in effect.

A rate of 33 cents applies on cedar poles in carloads from Spokane group points, including Sand Point, to Ontario. This rate is blanketed as to destinations to main-line points on the Oregon Short Line and also to points on other lines as far east as Colorado. This rate was established and is maintained in competition with the rate published by the northern lines which form the short routes from Sand Point, through Billings, Mont., to the same destinations.

With respect to points on newly constructed branch lines, it is the policy of the Oregon Short Line, and of other carriers operating in the northwest, to construct rates to and from such branch-line points by adding arbitraries to the junction point rates, reducing the arbitraries as traffic on the branch lines increases. This policy was followed as to points on the Wilder, Murphy, and Twin Falls branches of the Oregon Short Line. The rates to Buhl, Hill City, Ketchum, Burley, Oakley, Rogerson, and Lakeport, Idaho, all branch-line points, are from 2 cents to 6 cents higher than the rates to the junction points. In many cases we have held that carriers may make an additional charge for branch-line service. *Page Milling Co. v. N. & W. Ry. Co.*, 30 I. C. C., 605-610. *American National Live Stock Assn. v. S. P. Co.*, 26 I. C. C., 37-40. On the Oregon Short Line, Boise affords the one exception to the rule with respect to rates to and from branch-line points. It has generally been accorded main-line rates on other commodities as well as lumber. Defendants urge that this course was and is justified because Boise, the capital of Idaho, is a large jobbing center and the most important city in that state commercially. Data submitted indicate that the volume of traffic moving to and from Boise is greatly in excess of that to and from other branch-line points, particularly those on the Oregon Eastern branch. The movement of poles from Sand Point to Boise is not disclosed. It appears, however, that one carload of posts and one carload of poles were shipped from Sand Point to Vale during the year 1915. Complainant's witness testified that the shipment in issue was the only carload of poles it had shipped to Vale. The fact that Boise has been accorded main-line rates does not appear to have resulted in undue prejudice or disadvantage to Vale.

While the matter is not here in issue complainant argues that discrimination resulted by reason of the maintenance by the Oregon-Washington of a through rate of 33 cents on lumber from points on its Wallace branch, in northwestern Idaho, to Vale. Effective Janu-

- ary 15, 1915, this rate was reduced to 32½ cents, which rate is still in effect. It is apparently constructed by adding an arbitrary of 2½ cents to the rate of 30 cents maintained from points on the Wallace branch to Ontario. The record does not indicate that any carload shipments of poles have moved from points on the Wallace branch to Vale under this rate or that there is any competition as to poles between points on the Wallace branch and Sand Point. The 30-cent rate to Ontario also applies from points in the Spokane group on the line of the Oregon-Washington and was established as a result of the decisions in *Oregon & Washington Lumber Mfrs. Asso. v. U. P. R. Co.*, 14 I. C. C., 1, and *Pacific Coast Lumber Mfrs. Asso. v. N. P. Ry. Co.*, 14 I. C. C., 23.

Complainant contends that at the time of movement a commodity rate of 5 cents applied on cedar poles in carloads from Sand Point to Spokane and that the class E rate of 26 cents applied from Spokane to Vale, making the Spokane combination 31 cents, 5 cents less than the joint rate charged on the shipments. But the class E rate did not apply on poles, in carloads, from Spokane to Vale.

We find that the rate assailed is not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial, and an order will be entered dismissing the complaint.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 827.¹
LUMBER FROM ARKANSAS CITY, ARK.

Submitted October 5, 1916. Decided March 13, 1917.

1. Certain proposed increased rates on lumber in carloads from Arkansas City, Ark., to Mississippi River crossings, Memphis, Tenn., to St. Louis, Mo., inclusive, and to Cairo, Ill., for beyond, found justified.
2. Proposed rates on lumber from Arkansas City to Thebes, Ill., for beyond, and to points in central freight association territory, found not justified. Schedules under suspension ordered canceled without prejudice to the filing of tariffs to conform to our findings.
3. Rates on lumber in carloads from Arkansas City to points in Illinois-Wisconsin, Buffalo-Pittsburgh, western trunk line, central freight association, and eastern trunk line territories found to be unduly prejudicial to the extent that they exceed the corresponding rates from Helena, Ark., by more than 2 cents per 100 pounds.

Henry G. Herbel and *Fred G. Wright* for Missouri Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and its receiver.

E. O. Johnson for Thane Lumber Company.

John R. Walker for complainants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases are related and will be disposed of in this report.

Complainants in the formal case are corporations engaged in the manufacture of hardwood lumber, with their principal offices at Arkansas City, Ark. By complaint, filed August 23, 1915, they allege that the rates on lumber from Arkansas City to destinations in Illinois-Wisconsin, Buffalo-Pittsburgh, western trunk line, central freight association, and eastern trunk line territories are unreasonable and unduly prejudicial in so far as they exceed by more than 1 cent per 100 pounds the rates contemporaneously maintained from Helena, Ark., to the same destinations.

By schedules filed to take effect April 20 and May 9, 1916, respondents in the suspension proceeding proposed certain increases in the rates on lumber, carloads, from Arkansas City to Memphis Tenn., Cairo and Thebes, Ill., St. Louis, Mo., and to points in central freight association territory. Upon protests filed by the Thane

¹ The proceeding also embraces complaint in Docket No. 8259, Thane Lumber Company et al. v. St. Louis, Iron Mountain & Southern Railway Company et al.

Lumber Company and other interested shippers of Arkansas City, the schedules were suspended by us until February 18, 1917. Subsequently the carriers voluntarily postponed the effective date of the proposed schedules to May 19, 1917.

The rates under consideration apply on hardwoods, and, according to the carriers, one reason for the proposed changes is to equalize the rates on hardwoods and on yellow pine. The evidence adduced was directed mainly to the rates to the Mississippi River crossings and to central freight association and eastern trunk line territories. The St. Louis, Iron Mountain & Southern Railway, hereinafter called the respondent, assumed the burden of defending the present rates and of justifying those under suspension. Rates are stated in cents per 100 pounds.

Arkansas City is situated on the west bank of the Mississippi River and is a local station on the Iron Mountain, 103 miles south of Helena and 157 miles south of Memphis. Helena is 75 miles from Memphis. Memphis, Helena, and Arkansas City are served by water carriers. Helena is also served by 8 rail carriers, including the respondent, while Memphis, on the east bank of the Mississippi River, is served by 10 rail carriers, including the respondent. On both sides of the Mississippi River there is a belt of hardwood territory which extends from the vicinity of Memphis to the south. Greenville, Miss., on the east bank of the river, 151 miles south of Memphis, and Arkansas City are both well within this belt.

The following table shows the present and proposed rates to St. Louis, Cairo, and Thebes from Arkansas City, and the present rates from Memphis and Helena:

From—	To St. Louis, local rates.		To Cairo and Thebes, local rates.		To Cairo for beyond.		To Thebes for beyond.	
	Pres- ent rates.	Pro- posed rates.	Pres- ent rates.	Pro- posed rates.	Pres- ent rates.	Pro- posed rates.	Pres- ent rates.	Pro- posed rates.
Memphis.....	12.5	.....	11.0	.....	11.0	.....	¹ 8.0	.....
Helena.....	12.5	.....	11.0	.....	11.0	.....	¹ 9.0	.....
Arkansas City.....	13.0	14.5	11.0	13.0	11.0	13.0	² 11.0	13.0

¹ When destined to points in Iowa, Minnesota (except certain points specified), Missouri, North Dakota, and South Dakota; from Memphis, 7 cents; from Helena, 8 cents. These rates apply only by way of the Iron Mountain.
² To Thebes, on cottonwood, gum, and willow, carloads, 10 cents.

The present rate on hardwoods from Arkansas City to Memphis is 8.75 cents; the proposed rate is 9.75 cents. On August 1, 1916, the rate to Memphis was changed to 12 cents. This change will be hereinafter discussed.

The rates from Helena to points beyond the river crossings are generally 1 cent per 100 pounds higher than the corresponding rates

from Memphis; to the same destinations the present rates from Arkansas City are from 1 cent to 5.75 cents higher than the rates from Helena.

It is in evidence that by reason of its location on the river, and perhaps by reason of favoritism from a former management of the Iron Mountain, rates on hardwoods from Arkansas City have been much lower than the rates from intermediate points on respondent's line and from other points in the immediate neighborhood. Respondent states that the proposed rates to Memphis and other Mississippi River crossings resulted in part from the disposition made of the complaint in *Dermott Land & Lumber Company v. St. L., I. M. & S. Ry. Co.*, Docket No. 8431. The complainant therein alleged that the rates from Dermott and Blissville, Ark., were unreasonable and unduly prejudicial as compared with the rates from Arkansas City. The prayer was for rates not exceeding those from Arkansas City by more than 1 cent. The complaint in that case was dismissed at the request of the parties, after the filing of a stipulation by them in which it was agreed that the rates from Dermott and Blissville to Cairo, Thebes, and St. Louis should not exceed the rates from Pine Bluff, Ark.

The protestants claim that Memphis, Helena, and Arkansas City should be grouped with respect to outbound rates on hardwoods. This claim, however, is based upon commercial rather than upon transportation conditions. Memphis, a city of approximately 150,000 inhabitants, is a great hardwood center; Helena, with approximately 15,000 inhabitants, has 20 hardwood mills; and Arkansas City, with a population of 1,500, has 3 hardwood mills. Nevertheless, Arkansas City manufactures about one-fourth as much hardwood as Helena and one-tenth as much as Memphis.

Complainants state that under certain transit rules of the respondent they can not go as far toward Helena in the purchasing of logs and rough lumber as Helena can come south toward Arkansas City in buying the same rough material. The inbound rates on rough material for similar distances are the same to both Helena and Arkansas City. Any disadvantage existing under the transit rules as to Arkansas City results from the fact that the movement of rough material toward Helena is in the natural direction of the outbound product, whereas the movement of similar rough material southward to Arkansas City for manufacture there and reshipment northward and eastward involves back hauls.

Briefly described, respondent's lines in Arkansas extend north and south near the river from Arkansas City to Paragould and Knobel; a main line from Knobel, in the northeastern portion of the state, to Texarkana, in the southwest, passes through Little Rock,

which is approximately in the center of the state; and branch and connecting lines diverge from the lines described. Respondent compares the present and proposed rates from Arkansas City to the Mississippi River crossings involved with rates on hardwoods from points on its main line southeast and southwest of Little Rock and with rates from Greenville to the same destinations as follows:

Arkansas City.				A					B						Greenville, Miss.	Pine Bluff, Ark.	
To—	Miles.	Present.	Proposed.	Arkadelphia.	Dermott.	Blissville.	Baxter.	Macon.	Groveland.	Paddock.	McGehee.	Kelso.	Countiss.	Elaine.			Barton.
East St. Louis.....	427	13	14.5	19	18	18	19	19	18	18	18	18	14	14	14	15.5	18
St. Louis.....	420	13	14.5	19	18	18	19	19	18	18	18	18	14	14	14	.....	18
Cairo.....	338	11	13	16	15	15	16	16	15	15	15	15	11	11	11	14	15
Thebes.....	316	11	13	16	15	15	16	16	15	15	15	15	11	11	11	.....	15
Memphis ¹	157	8.75	9.75	14	12	12	12	12	12	12	11	11	8	8	8	8.5	13
Thebes for beyond:																	
On cottonwood, gum, and wil- low.....		10	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
On other woods..		11	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Lumber (except yellow pine, cy- press, and cer- tain other ex- cepted woods)..			13	15	13	13	15	15	13	13	13	13	11	11	11	.....	13

¹ Effective Aug. 1, 1916, rate of 12 cents from Arkansas City to Memphis.

The rates shown from Greenville were approved in *Rates on Lumber from Southern Points*, 34 I. C. C., 652, 682, 685. The points of origin grouped under A are located southeast and southwest of Little Rock and the distances from these points to the destinations shown are approximately the same as the distance from Arkansas City. The points of origin grouped under B are intermediate to Arkansas City, and the distances from these points of origin decrease until at Barton they are approximately 100 miles less than the distance from Arkansas City. The present rates to St. Louis, East St. Louis, Thebes, and Cairo from the points shown under A and from the points shown under B yield average per ton-mile revenues of 8.8 mills and 9.1 mills, respectively. The present rates from Arkansas City to the same destinations yield an average per ton-mile revenue of 6.4 mills, while the proposed rates from Arkansas City would yield an average per ton-mile revenue of 7.3 mills. The proposed rate from Arkansas City to Thebes proper and for beyond, 18 cents, would yield a per ton-mile revenue of 8.23 mills. The rates to Memphis from the group A points yield an average per ton-mile revenue of 14.74 mills, from group B points 17.14 mills, while from Arkansas City the present and proposed rates yield 11.15 mills and 12.42 mills per ton-mile, respectively.

The rates to Memphis from nine Arkansas points, approved by the Commission and shown in *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co.*, 39 I. C. C., 303, yield an average revenue per ton-mile of 13 mills. The rate of 12 cents from Arkansas City to Memphis, published August 1, 1916, which respondent states was filed in accordance with our findings in the case cited, would yield a per ton-mile revenue of 15.29 mills. The rates referred to which were approved by us in former cases applied on yellow pine, which in the past has taken a higher rate than hardwoods, though it has been conceded there are no transportation reasons which justify a difference. In *Rates on Lumber from Southern Points, supra*, increases west of the Mississippi River in the rates on hardwood to the level of the rates on yellow pine were approved. And in the same case it was held that cottonwood and gum were not entitled to special rates; increases in the rates on those woods to the level of the rates on other hardwoods were also approved.

In *Memphis Freight Bureau v. St. L., I. M. & S. Ry. Co., supra*, at page 311, the Commission said:

As already stated, it is our conclusion and finding that, with the exception noted, the present rates on lumber in carloads to Memphis from all stations in Arkansas and Louisiana on the lines of the defendants are just and reasonable. We are of the opinion, however, and find, that the application of rates on lumber in carloads from points in Arkansas on the Iron Mountain, Rock Island, and Frisco to Memphis, which exceed by more than 1 cent per 100 pounds the rates contemporaneously applied by these defendants to the transportation of like shipments for like distances between points in Arkansas subjects Memphis to undue and unreasonable prejudice and disadvantage.

Respondent states that the carriers have accordingly revised their rates from Arkansas points to Memphis, using the same scale as prevails in Arkansas plus 1 cent per 100 pounds for bridge tolls. Included therein is a rate from Arkansas City to Memphis, increased from 8.75 cents to 12 cents on August 1, 1916. The rate of 9.75 cents from Arkansas City to Memphis, here in issue, having been suspended, the respondent was in contempt of the Commission's rules in establishing the rate of 12 cents. Nothing herein said should be construed as approving the latter rate; indeed, the 12-cent rate appears to be improperly adjusted, in view of the rates to Cairo, Thebes, and St. Louis.

Respondent also compares the proposed rates from Arkansas City to the river crossings with the intrastate and interstate rates on lumber between points in Missouri, Arkansas, Louisiana, Alabama, and Texas. Distances considered, the proposed rates to the river crossings are lower than the rates cited. Other rate comparisons are submitted by the parties, which have been considered, but which need not be discussed in detail.

Upon all the facts disclosed we find that the local rates proposed in the suspension proceeding from Arkansas City to the river crossings and the proportional rate proposed from Arkansas City to Cairo have been justified. With respect to other rates therein involved in the suspension proceedings we do not think they should exceed the corresponding rates from Helena by more than 2 cents per 100 pounds, and we accordingly find that they have not been justified. An order will be entered requiring the cancellation of the schedules under suspension, but without prejudice to the filing of tariffs conforming to our findings herein.

Our findings in No. 8259 are that the rates on lumber in carloads from Arkansas City to points on defendants' lines in Illinois-Wisconsin, Buffalo-Pittsburgh, western trunk line, central freight association, and eastern trunk line territories are not shown to be unreasonable, but that they are and for the future will be unduly prejudicial to the extent that they exceed and may exceed the rates on like traffic from Helena to the same destinations by more than 2 cents per 100 pounds, and an order will be entered accordingly.

43 I. C. C.

No. 8514.
DUNLEVY PACKING COMPANY
v.
PENNSYLVANIA COMPANY.

Submitted April 6, 1916. Decided March 13, 1917.

Charges collected for cleaning and disinfecting certain cars which had been used to transport live stock from Chicago and East St. Louis, Ill., and various points in Indiana, Iowa, and Minnesota to Pittsburgh, Pa., not shown to have been assessed by or on account of defendant, and such charges not shown to have been unreasonable, unjustly discriminatory, or otherwise in violation of the act. Complaint dismissed.

M. L. Hurd for complainant.

A. P. Burgwin for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, the successor of Dunlevy & Bro. Company, is a corporation engaged in the meat packing business, with an office at Pittsburgh, Pa. By complaint, filed November 19, 1915, it alleges that the charges collected by defendant during the period from November, 1914, to February, 1915, inclusive, for disinfecting certain cars used in the transportation of live stock from Chicago and East St. Louis, Ill., and points in Indiana, Iowa, and Minnesota, consigned to Dunlevy & Bro. Company at Pittsburgh, were unlawful, unreasonable, and unduly discriminatory. Reparation is asked.

The shipments arrived at Pittsburgh either over defendant's line or over the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, not a party to this proceeding. The freight charges, the amount of which does not appear, were collected by those carriers, but are not in issue. Complainant bases its claim for reparation solely upon the ground that charges for cleaning and disinfecting the cars, at a rate of \$2.50 for single-deck and \$4 for double-deck cars, were collected without tariff authority. The complaint was filed apparently on the theory that these charges were assessed by defendant, the Pennsylvania Company. It appears, however, that all of the shipments were delivered at complainant's plant at East Liberty, a local station on the Pennsylvania Railroad within the switching limits of Pittsburgh, and that the charges in question were assessed by and paid to the Pennsylvania Railroad, not a party defendant. The tariffs of the

Pennsylvania lines west of Pittsburgh named rates on live stock from Chicago and East St Louis to Pittsburgh, but during the period of movement named no charges for cleaning and disinfecting cars at Pittsburgh. The Pennsylvania Railroad was a party to the above tariffs, which provided that freight transported thereunder would be subject to the published rules and regulations of participating lines. The tariffs of the Pennsylvania Railroad in effect during the period of movement provided for charges, in the amount per car assessed, for cleaning and disinfecting cars which had been used to transport live stock, where necessary on account of federal, state, county, or municipal regulations, and apparently the charges in question were collected in accordance with the above provision.

There is no evidence that the service of cleaning and disinfecting the cars was rendered by or on account of the Pennsylvania Company, the only carrier named as party defendant, or that it was in any way responsible for the cleaning and disinfecting charges; nor is there any evidence to show that such charges were unreasonable or unjustly discriminatory. The complaint will therefore be dismissed.

43 I. C. C.

No. 8740.
AMERICAN MILLING COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted September 23, 1916. Decided March 13, 1917.

Rates on grain by-products from Peoria, Ill., to points in central freight association territory found to have been unreasonable. Reparation awarded.

Cassoday, Butler, Lamb & Foster and *Karl D. Loos* for complainant.

Charles P. Stewart for defendants.

L. E. Oliphant for Lake Erie & Western Railroad Company.

J. B. McCorkle for Vandalia Railroad Company.

D. Mowat for Toledo, Peoria & Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of grain by-products and stock and poultry feeds at Peoria, Ill. By complaint, filed March 18, 1916, it alleges that the rates charged on 220 carloads of grain by-products shipped from Peoria to various destinations in central freight association territory during the period from January 8, 1914, to September 1, 1914, inclusive, were unreasonable and unjustly discriminatory to the extent that they exceeded the rates formerly in effect and subsequently reestablished. Reparation is asked. The claim was filed with the Commission informally January 14, 1915.

Under defendants' tariffs grain by-products were included in the list of articles taking the grain products rate prior to about March 16, 1910. Both local and reshipping rates were published on grain and grain products. The reshipping rates were in most instances 1 cent less than the corresponding local rates. Grain by-products were accorded reshipping rates. On or about the date named the rates on grain by-products were published in the tariffs under a separate item. These were local only and in most instances were 1 cent less than the local rates applicable to grain and grain products. The result of this change was to apply local rates to grain by-products, in most instances the same as the reshipping rates on grain and grain

products. The incidents of transit in connection with grain by-products were thereby avoided.

During the year 1913 defendants and other carriers filed tariffs proposing to increase by 1 cent per 100 pounds their local rates on grain by-products from Chicago, Peoria, East St. Louis, Ill., and the Mississippi River to central freight association territory and trunk line termini. Increases were also proposed in the rates on grain and grain products from points in Illinois to various markets. The cancellation of certain proportional rates from the Mississippi River crossings and other increases were also involved. Protests were filed against the proposed rates from Mississippi River crossings. The tariffs publishing these rates and also the proposed rates from Chicago and Peoria were suspended, although no protest was filed against the proposed rates from Peoria. In *Grain Rates in Central Freight Association Territory*, 28 I. C. C., 549, we found that the proposed rates from the Mississippi River crossings had not been justified. We prefaced our report, however, by explaining that as a great number of tariffs were under suspension only those that had been protested would be examined. It is now stated that no protest against the increased rates from Peoria was made by complainant because it was thought that whatever action was taken with respect to the rates on grain by-products from St. Louis would govern as to the rates from Peoria. The increased rates were made effective from Chicago and from Peoria January 8, 1914. The Chicago shippers then complained to the carriers about the situation which had been produced as being prejudicial to them, because of the lower rates from St. Louis. Therefore the former rates were restored from both Chicago and Peoria on September 1, 1914, except that the Lake Erie & Western Railroad Company restored these rates from Peoria on July 1, 1914.

The shipments in question moved from Peoria to points in central freight association territory while the increased rates were in effect. Charges were collected thereon at the rates legally applicable. During the period the increased rates applied on grain by-products there was no like increase proposed in the reshipping rates on grain and grain products. Most of the grain and grain products from Peoria moved on the reshipping rates. It is urged that the competition found to exist between grain products and grain by-products in *Grain Rates in Central Freight Association Territory*, *supra*, was experienced by the complainant and that in all other respects the cited case is controlling here. In that case we said:

These so-called by-products, which were brought to our attention, are manufactured from grain. They have the same value as many grain products, and they come into direct competition with these grain products in the feeding

of stock. Their value is no greater than that of grain products; in many instances it is less. The cost of transportation and all the incidents of transportation are substantially the same. In the past they have gone under the same rate, and it is no answer now when this rate is increased against the manufacturer of the by-product to say that his article should take the local rate while the products of grain are entitled to a reshipping rate. This increase is a substantial thing which the shipper must pay, and which can not be justified by any mere change in the nomenclature of its statement. It may be that these by-products ought to take a higher rate than grain products; it may be that they can not properly be given the privileges of transit while grain products are; but before this discrimination, which must practically drive out of business these manufacturers if applied at all points and in all directions, is pronounced a due and proper one, something more must be presented to us than the mere statement by these respondents that they have seen fit to make this classification.

The carriers contend that the local rates on grain by-products charged from Peoria were inherently reasonable and urge that the situation at Peoria is not similar to that at St. Louis on which the cited case is based. It is explained that the lines operating from the Mississippi River because they originate no grain or grain products at St. Louis or at East St. Louis and because of transit services granted on these products at Peoria and Chicago found it necessary to publish rates on grain and grain products lower than their local rates. In publishing these rates, instead of limiting them to apply on traffic originating beyond the Mississippi River, they elected to publish them as flat local rates, although they were lower than the local rates which ordinarily would have applied but which were not published. The rates on grain by-products were local rates and were approximately the same as the revised rates on grain and grain products. When the carriers proposed to increase the rates on grain by-products from St. Louis, which increase was under consideration in the cited case, they could not at the same time increase their rates on grain and grain products without prejudicing St. Louis and themselves on grain and grain products because of relatively lower reshipping rates from Chicago and Peoria on grain and grain products which were not increased. Having both local and reshipping rates on grain and grain products in effect from Chicago and Peoria, which situation, as explained, did not exist at St. Louis, it was possible to increase the local rates on grain and grain products from those points at the time those on grain by-products were increased without disturbing the reshipping rates on grain and grain products from those points. The distinction drawn between the situation at St. Louis and the situation at Peoria is without force, since it does not appear that any grain products as a rule move from Peoria on other than reshipping rates. During the period the increased rates were in effect on grain by-products from Peoria, grain

products, a competing commodity, could be handled in many instances on rates that were lower.

We find that defendants have not sustained the burden of justifying the increased rates during the period in question, and that the rates charged on the shipments in question were unreasonable and unduly prejudicial to the extent that they exceeded rates in effect prior to January 8, 1914. We further find that complainant made the shipments as described and paid and bore charges thereon at the rates herein found to have been unreasonable; that it was damaged to the extent that the charges collected exceeded the charges that would have accrued at the rates herein found to have been reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

43 I. C. C.

No. 8752.
A. ROSENBLUM
v.
BOSTON & MAINE RAILROAD ET AL.

Submitted July 22, 1916. Decided March 13, 1917.

Rates applicable on certain carloads of onions from South Deerfield and Hatfield, Mass., to Barclay street, New York, N. Y., found to have been unreasonable. Defendants authorized to waive certain undercharges.

R. A. Koontz for complainant.

John M. Sternhagen for New York Central Railroad Company.

A. E. Prescott for Boston & Maine Railroad.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the wholesale produce business at Brooklyn, N. Y. By complaint, filed March 25, 1916, he alleges that the rates charged by defendants for the transportation of 18 carloads of onions from South Deerfield and Hatfield, Mass., to Barclay street, New York, N. Y., during the period from April 4, 1914, to October 12, 1914, inclusive, were unreasonable and unjustly discriminatory. Reparation is asked. The complaint was amended at the hearing to exclude the New York, New Haven & Hartford Railroad as a party defendant. Rates are stated in cents per 100 pounds.

Nine of the shipments originated at South Deerfield and four at Hatfield. All were consigned to Barclay street, New York, with instructions to hold at Sixtieth street for orders, and all moved by way of the Boston & Maine and the New York Central railroads. Charges were collected on 8 of the shipments from South Deerfield at a rate of 15 cents, minimum 24,000 pounds, and on the 10 remaining shipments at a rate of 17 cents, minimum 24,000 pounds. The charges were paid and borne by complainant. The official classification, which governs traffic from and to the points involved, rated and rates onions, without tops, in carloads, minimum 24,000 pounds, fifth class. When the shipments moved a fifth-class rate of 17 cents was in effect from the points involved direct to Barclay street and a fifth-class rate of 19 cents to certain points in New York harbor lighterage limits, including Barclay street.

Complainant contends that the 17-cent rate was applicable on the shipments. No holding arrangement at Sixtieth street was provided in connection with the 17-cent rate, but under the 19-cent rate such a holding arrangement was authorized, when the shipper specified it in the bill of lading or when the consignee filed a request therefor with the agent at destination. Under the 19-cent rate a shipper could direct that his shipments be held at Sixtieth street for a period of 10 days so that he could determine upon the particular destination in New York harbor at which he desired them to be delivered. It appears that these shipments were held for from one to five days. Had complainant previously known the disposition of his shipments, he could have consigned them direct to Barclay street at the lower rate. The carriers perform certain switching movements and are required to bear certain per diem charges incident to the holding of cars at Sixtieth street which makes the service of more value than a direct movement to Barclay street. The shipments involved were held at Sixtieth street and all of the provisions governing the traffic under the 19-cent rate were complied with. We therefore find that the 19-cent rate was legally applicable on the shipments. Three of the shipments were, therefore, undercharged to the extent of 4 cents per 100 pounds and 10 of them to the extent of 2 cents per 100 pounds.

Prior to April 1, 1914, and before the shipments moved, the fifth-class rate applicable on shipments on onions from the points in issue direct to Barclay street was 15 cents and on shipments to the same destination, held in transit at Sixtieth street, 17 cents. On that date the rate on shipments direct to Barclay street was increased to 17 cents and on shipments held at Sixtieth street to 19 cents.

On December 1, 1914, after the shipments moved, the fifth-class rate from the points in question direct to Barclay street was reduced to 13 cents and the rate to points in New York lighterage limits, including Barclay street, with the privilege of holding shipments at Sixtieth street, was reduced to 16 cents.

As the rate for the service in question was increased on April 1, 1914, from 17 cents to 19 cents, the burden of justifying the increased rate is upon the defendants.

Defendant Boston & Maine Railroad explains that all of its class rates were readjusted on April 1, 1914, on a distance basis with the idea of increasing its revenue as a whole, and that the new rates were approved by the State railroad commissions of the states of Maine, New Hampshire, Vermont, and Massachusetts. Contemporaneously with the establishment of the increased local class rates the joint class rates from the points involved to New York were correspondingly increased. It is further explained that rates from the points of origin in question to New York were reduced on December 1, 1914,

to meet the rates of the New York, New Haven & Hartford Railroad, via which the distances are about 100 miles less than the distances via the route the shipments in controversy moved.

The fact that the general readjustment of the Boston & Maine's rates was approved by the various state railroad commissions is not sufficient in itself to justify the increase in its rates on onions from 17 cents to 19 cents from the points in question to New York. *Globe Soap Co. v. A. & S. Ry. Co.*, 40 I. C. C., 121.

Irrespective of the fact that the shipments in controversy were held at Sixtieth street, complainant asks reparation on basis of the 18-cent rate subsequently established from the points of origin direct to Barclay street. The present rate, including the service at Sixtieth street, is 16 cents and we do not find it proper to measure this rate by the rate direct to Barclay street.

We find that defendants have failed to justify as reasonable a rate in excess of 17 cents per 100 pounds, minimum 24,000 pounds, and that the charges collected on the shipments in question were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of 17 cents per 100 pounds, which rate we find to have been reasonable. The undercharges down to the basis of 17 cents per 100 pounds may be waived. As a rate of 16 cents is now in effect, no order for the future is necessary.

43 I. C. C.

No. 8593.

**LA CROSSE SHIPPERS' ASSOCIATION, FOR
INTERSTATE OIL COMPANY,**

v.

**CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY ET AL.**

Submitted June 2, 1916. Decided March 13, 1917.

Rates on petroleum oil and its products in carloads from Lawrenceville, Ill., to La Crosse, Wis., not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

S. J. Bolton and W. W. West for complainant.

Kenneth F. Burgess for Chicago, Burlington & Quincy Railroad Company.

R. H. Widdicombe for Chicago & North Western Railway Company; Baltimore & Ohio Southwestern Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; and New York Central Railroad Company.

J. N. Davis and C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

R. B. Scott, C. C. Wright, and O. W. Dynes for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a voluntary association of shippers and receivers of freight at La Crosse, Wis., and proceeds here on behalf of the Interstate Oil Company, a corporation engaged in jobbing oil at La Crosse. By complaint, filed January 13, 1916, as amended, it alleges that the rate of 25 cents per 100 pounds charged by defendants for the transportation of petroleum oil and its products, in carloads, from Lawrenceville, Ill., to La Crosse, is unreasonable and unjustly discriminatory. The establishment of a reasonable rate for the future is asked. Rates are stated herein in cents per 100 pounds.

Lawrenceville is located in southeastern Illinois, 10 miles west of Vincennes, Ind., and is served by the Cleveland, Cincinnati, Chicago & St. Louis Railway and the Baltimore & Ohio Southwestern Railroad. La Crosse is located in southwestern Wisconsin, 128 miles southeast of St. Paul, Minn., and 263 miles northwest of Chicago, Ill., and is served by the Chicago, Burlington & Quincy and the

Green Bay & Western railroads, and also by the Chicago & North Western, the Chicago, Milwaukee & St. Paul, and the La Crosse & Southeastern railways. The short-line distance from Lawrenceville to La Crosse is 487.4 miles, by way of the Cleveland, Cincinnati, Chicago & St. Louis, the Chicago & Eastern Illinois Railroad, not a party to this proceeding, and the Chicago & North Western, through Danville and Chicago, Ill.

Petroleum lubricating oil is the only oil produced at Lawrenceville. The general basis of rates on oil in western trunk line territory is fifth class. Oil from Lawrenceville to La Crosse is governed by the western classification and takes the fifth-class rate of 25 cents.

Complainant contends that the rate assailed should not exceed the fifth-class rate of 19.5 cents in effect at the time of the hearing from Lawrenceville to Prairie du Chien, Wis., the latter point being 59 miles south of La Crosse and 468 miles from Lawrenceville. On June 15, 1916, the fifth-class rate from Lawrenceville to Prairie du Chien was increased to 20.9 cents, and this rate is still in effect. Complainant objects to La Crosse being grouped with St. Paul, the latter point being 624 miles from Lawrenceville, and argues that the rate from Lawrenceville to La Crosse should be lower than the rate to St. Paul, because the fifth-class rate from Vincennes to La Crosse is 3 cents lower than the corresponding rate to St. Paul. It cites fifth-class rates from the midcontinent oil fields, central freight association territory, Chicago, and St. Louis, Mo., to La Crosse, which are 1 cent, 3 cents, 2 cents, and 4 cents lower, respectively, than the corresponding rates to St. Paul. The rate assailed is compared with rates from Lawrenceville; of 9 cents to Chicago, 224 miles; 16.9 cents to Madison, Wis., 354 miles; 17.9 cents to Dubuque, Iowa, 376 miles; and 15.8 cents to Freeport, Ill., 308 miles. The rate to La Crosse yields 10.25 mills per ton-mile, and the rates to Chicago, Madison, Dubuque, and Freeport yield 8 mills, 9.54 mills, 9.5 mills, and 10.26 mills, respectively.

Complainant states that it competes with dealers located at Milwaukee, Wis., Madison, and Dubuque. A witness for one of the defendants testified that complainant purchases most of its petroleum lubricating oil in the midcontinent oil fields, and purchases other oils which it handles from eastern points. The rates to La Crosse from the midcontinent oil fields and from the eastern points are higher than the rates from Lawrenceville.

The rate applicable on petroleum from Chicago to La Crosse is 18 cents, on basis of fifth class. Defendants show that although the distance from Lawrenceville to La Crosse is 224.4 miles greater than the distance from Chicago to La Crosse, the rate from Lawrenceville for a three-line haul is only 7 cents higher than the rate from Chicago

which applies over a single line. They emphasize the fact that rates from oil-producing points are on the fifth-class basis, and compare favorably with the rate assailed. They cite numerous rates with favorable results, of which the following are illustrative:

From—	To—	Distance.	Rate.	Revenue per ton-mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Sugar Creek, Mo.....	La Crosse, Wis.....	508	25	9.24
Stoy, Ill.....	do.....	466	25	10.7
Bridgeport, Ill.....	do.....	401	25	10.2
Whiting, Ind.....	do.....	280	18	12.8
Toledo, Ohio.....	do.....	408	26	10.5
Cincinnati, Ohio.....	do.....	548	28.3	10.3
Indianapolis, Ind.....	do.....	447	24.1	10.8
Lawrenceville, Ill.....	Omaha, Nebr.....	555	26.1	9.4
Do.....	Des Moines, Iowa.....	436	24	11
Whiting, Ind.....	Sioux City, Iowa.....	526	27	10.3
Wood River, Ill.....	La Crosse, Wis.....	453	18	9

We find that the rate assailed is not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial, and an order will be entered dismissing the complaint.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 925.

CALUMET, MICH., LUMBER.

Submitted November 27, 1916. Decided March 13, 1917.

Proposed cancellation of joint rates on lumber and other forest products from Pacific coast points on the Great Northern Railway, the Northern Pacific Railway, and connecting lines to destinations in Michigan on the Copper Range Railroad found not justified and suspended schedules ordered canceled.

S. J. Henry for Northern Pacific Railroad Company.

H. A. Kimball for Great Northern Railway Company.

F. D. Burroughs for Copper Range Railroad Company.

Thorpe Babcock and *L. S. McIntyre* for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect September 25, 1916, it is proposed to cancel the present joint through rates on lumber and shingles, and other forest products, from Pacific coast points on the Great Northern Railway, hereinafter called the Great Northern, the Northern Pacific Railway, hereinafter called the Northern Pacific, and on certain connecting lines, to destinations in Michigan on the Copper Range Railroad, thereby rendering applicable combination rates based on Houghton, Mich., which would be from 2.5 cents to 7.5 cents higher than the present joint rates. Upon protest by the West Coast Lumbermen's Association, the schedules were suspended until January 23, 1917, and later until July 23, 1917. The proposed cancellation was made by the publishing agent under instructions from the Copper Range Railroad, hereinafter called the respondent.

Under a tariff in effect prior to January 15, 1916, joint through rates were published applicable from the points on the Northern Pacific by way of western gateways, such as Seattle and Tacoma, Wash., in connection with the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, to McKee, Mich., for delivery thence by the respondent. This routing required one of the principal originating lines, namely, the Northern Pacific, to short haul itself. Traffic from points on certain originating lines connecting therewith and routed over this road affected them likewise. Accordingly, on January 15, 1916, the joint rates by way of the

Milwaukee and McKeever were canceled, and a routing was established by way of the Northern Pacific and the Great Northern to Superior, Wis., the Duluth, South Shore & Atlantic Railway to Houghton, Mich., and the line of the respondent beyond, the rate applicable over this routing being the same as the rate by way of McKeever. When this traffic is delivered to the respondent at Houghton its revenue is less than it would be if the traffic moved in connection with the Milwaukee by way of McKeever.

No evidence was offered by the respondent in justification of the cancellation as proposed. A statement by its general freight agent in the form of a letter, setting forth the position of the respondent, was read into the record by counsel, but this can not be considered in evidence.

The protestant shows that the proposed cancellation would result in undue prejudice against the lumber mills located on the lines of the Northern Pacific and the Great Northern and their connections and give an undue advantage to the mills located on the Milwaukee and its connections.

We find that the proposed cancellation of the joint rates has not been justified, and an order will be entered requiring the cancellation of the suspended schedules.

43 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 883.
CLASSIFICATION OF CYLINDERS AND GRATE BARS.

Submitted January 15, 1917. Decided March 13, 1917.

Proposed change in southern classification rating of new coppered or nickeled cylinders, described in the item under suspension, from fourth class to third class, not justified, and item ordered canceled.

***J. E. Kirk* for respondents.**

***Charles Conradie* and *Arthur B. Hayes* for protestant.**

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Item 46 on page 88 of southern classification I. C. C. No. 21, filed to take effect July 10, 1916, proposed to increase the less-than-carload rating of cylinders, wrought iron or steel, welded or seamless, coppered or nickeled, for compressed air or gases or liquids under pressure, in barrels, boxes or crates, from fourth class to third class; and item 12 on page 50 proposed to increase the less-than-carload rating of cast-iron grate bars, weighing each 25 pounds or over, loose, or in bundles weighing each 25 pounds or over, but not over 200 pounds, loose, from fifth class, and when weighing over 200 pounds each, loose, from sixth class to fourth class. Upon protest by the Prest-O-Lite Company, Incorporated, of Indianapolis, Ind., and the Thomas Grate Bar Company, of Birmingham, Ala., the items were suspended until November 7, 1916, and later until May 7, 1917. Prior to the hearing respondents asked permission to republish item 12, so as to provide a fifth-class rating on grate bars of the kind manufactured by the Thomas Grate Bar Company, the only protestant as to this item. The proposed rating was satisfactory to the Thomas Grate Bar Company, and item 12, as changed, was published, by special permission of the Commission, effective February 10, 1917. This leaves for consideration only the proposed change in the rating on cylinders.

Cylinders for containing liquids or gases under pressure are of various styles, sizes, and weights. Some weigh only a few ounces; others as much as 930 pounds. Some are finished rough, and resemble sections of iron pipe; others are coppered or nickel plated.

Acetylene gas is used for heating, lighting, and welding, and is shipped in steel cylinders, subject to the rules of the Commission with respect to the transportation of explosives. The Prest-O-Lite

Company, hereinafter called the protestant, manufactures acetylene gas cylinders at Speedway, a suburb of Indianapolis. These cylinders are shipped from Speedway, generally empty, to protestant's charging plants, located at different points throughout the country. One of protestant's principal charging plants is located at Atlanta, Ga., in southern classification territory. Most of the shipments are loaded and unloaded by protestant. At these charging plants the empty cylinders are filled with gas and shipped to consuming points. When the gas has been used the cylinders are returned to the charging plants for refilling and reforwarding. Four styles of protestant's cylinders are plated with copper or nickel, of which about 1,400,000, valued at about \$15,000,000, are in active use. Of these, 250,000 are in service in southeastern territory. Protestant has in use only about 79,000 cylinders other than coppered or nickeled; in southern classification territory only 7,900. One style of its cylinders, weighing each 68 pounds, is made in both finishes; some painted, and others coppered or nickeled.

The proposed increase from fourth class to third class would apply only to coppered or nickeled cylinders when transported new on the forward movement as distinguished from the movement of cylinders filled with gas and from the return movement of empty cylinders from customers to a charging plant. The southern classification rates cylinders filled with gas, regardless of size, weight, or finish, any quantity, fifth class; and returned empty cylinders, for recharging, any quantity, sixth class.

Respondents contend that transportation conditions always present with coppered or nickeled cylinders, and not appertaining to other cylinders, justify the increased rating. The coppered and nickeled cylinders, weighing from 13 to 72½ pounds, are shipped two, three, or four in a crate, weigh less per unit than the general run of other cylinders, and therefore, their witness testified, are more expensive to handle. They are always shipped with pressure gauges attached, which is not true of the other styles, and contain asbestos blocks, saturated with acetone, while a large proportion of the others do not. Respondents observe that coppered and nickeled cylinders were formerly rated third class. They urge that the present rating on cylinders filled with acetylene gas is too low and that the rating on returned empty cylinders was established without reference to transportation factors which control the forward movement of the new commodity.

Protestant testifies that the copper or nickel plating is put on so that the cylinders may be quickly and economically cleansed when they are returned for recharging. This is done by placing them against a buffing wheel and burnishing them, instead of repainting.

As to pressure gauges, the smaller cylinders are always shipped crated; and pressure gauges for the larger cylinders are shipped separately, to prevent breakage. Cylinders of both classes, coppered or nickeled and other than coppered or nickeled, have gauges, and both kinds are also made and used without pressure gauges. It was testified that there has never been a damage claim filed on account of the breakage of a pressure gauge. Protestant's witness explained that asbestos disks and acetone are used in the cylinders only to prevent dangerous conditions resulting from high pressure and thereby to render the use of acetylene gas possible. Protestant's principal competitor, the Commercial Acetylene Company, makes cylinders weighing under 60 pounds. All are painted and compete with protestant's cylinders.

In *Prest-O-Lite Co. v. B. & A. R. R. Co.*, 36 I. C. C., 545, we considered the official classification third-class rating of empty coppered or nickeled acetylene gas cylinders in less than carloads and prescribed a rating of fourth class; and in *Classification of Cylinders*, 38 I. C. C., 198, the increase there proposed in the southern classification rating of returned empty coppered and nickeled cylinders, any quantity, from sixth class to fifth class was found not to have been justified. We stated in both cases that no reason appeared for making a distinction, as a transportation matter, between coppered and nickeled cylinders and those not coppered and nickeled. No new facts or changed conditions are here presented which warrant a different conclusion in this case.

We find that the increased rating proposed on coppered or nickeled cylinders has not been justified, and the item under suspension will be ordered canceled.

43 I. C. C.

No. 7761.
TRAFFIC BUREAU OF THE TOLEDO COMMERCE CLUB
ET AL.
v.
CINCINNATI, HAMILTON & DAYTON RAILWAY
COMPANY ET AL.

Submitted November 13, 1915. Decided March 12, 1917.

On complaint that class rates governed by official classification, from Toledo, Cleveland, Springfield, Canton, Dayton, and Columbus, Ohio, Detroit, Mich., and contiguous territory, to points in the southeast, are unreasonable and unduly preferential, *Held*:

1. Such rates not found unreasonable.
- 2 The present relation between class rates from complaining territory described above and class and certain commodity rates from Chicago and Peoria, Ill., Milwaukee, Wis., and points from which rates to the southeast are made by the use of proportional rates to the Ohio River crossings, Cairo to Cincinnati, results in undue preference to the cities and territory from which the proportional rates apply and subjects complainants, and the localities of Toledo, Cleveland, Springfield, Canton, Dayton, Columbus, and Detroit and contiguous territory to undue and unreasonable prejudice and disadvantage.
3. Defendants ordered to cease and desist from the undue preferences and undue and unreasonable prejudices and disadvantages found to exist.

D. F. Hurd, A. T. Waterfall, G. L. Cory, P. M. Seymour, F. H. Hysell, R. M. Robinson, and H. G. Wilson for complainants.

W. E. McLaughlin, L. E. Hinkle, William A. Parker, and Ernest S. Ballard for carriers in central freight association territory.

Nelson W. Proctor for Louisville & Nashville Railroad Company.

R. Walton Moore and Charles J. Rixey, jr., for southern carriers.

REPORT OF THE COMMISSION.

MEYER, Chairman:

This complaint was filed by Traffic Bureau of the Toledo Commerce Club, Cleveland Chamber of Commerce, Detroit Board of Commerce, the Springfield Traffic Association, Canton Chamber of Commerce, the Columbus Chamber of Commerce, and the Greater Dayton Association. It is brought on behalf of the cities in which are located the commercial organizations named as complainants and adjacent localities in the states of Ohio, Michigan, and Indiana. These localities in central freight association terri-

tery are described as follows: In Ohio, within a territory bounded on the east by a line extending south from Fairport, Lake county; through Alliance, Stark county; Carrollton, Carroll county; and Eldon, Guernsey county, to Marietta, Washington county; and bounded on the south by a line extending from Marietta, Washington county; west through Athens, Athens county; Chillicothe, Rose county; and Hamilton, Butler county, to the Indiana state line; in Michigan, all of the towns and cities in the lower peninsula, except towns and cities on and west of the line of the Cleveland, Cincinnati, Chicago & St. Louis Railway, from Benton Harbor to the Indiana state line just north of Granger, Ind.; and in Indiana, bounded on the west by a line beginning at the Michigan state line just south of White Pigeon, Mich., running south to, but just east of Goshen, Ind., thence east of the line of the Cleveland, Cincinnati, Chicago & St. Louis Railway, to North Manchester; thence south and east of a line to but not including Logansport; thence south and east of the Wabash Railroad to LaFayette; thence via the Chicago, Indianapolis & Louisville Railway, to Crawfordsville; and bounded on the south by a line extending east from Crawfordsville through Noblesville, New Castle, and Richmond to the Ohio state line. The complaining cities and this adjacent territory will be hereinafter referred to as complaining cities' territory.

All class rates from complaining cities' territory to destinations in the states of Georgia, Alabama, and Florida and to some related points in the states of Mississippi, Kentucky, and Tennessee, generally referred to as southeastern territory, are alleged to be unjust and unreasonable and unduly prejudicial to shippers in complaining cities' territory, and unduly preferential of shippers in what is called in the record proportional rate territory, which designation will be adopted hereafter in this report. Rates from this territory are published in joint proportional freight tariff No. 104-D, I. C. C. A-82, issued by C. E. Fulton, agent. Proportional rate territory, practically all of which is in central freight association territory, embracing within its limits what are generally designated as Chicago, Peoria, and Milwaukee rate groups, may be roughly described as extending from Granville, Wis., and Madison, Wis., on the north; to Oden Junction, Ill., and West Liberty, Ill., on the south; and from Dubuque, Iowa, and Hannibal, Mo., on the west; as far as Goshen, Ind., and Benton Harbor, Mich., on the east. In making rates to the southeast from complaining cities' territory defendants use the local rates of the northern lines to the Ohio River crossings and add thereto the rates of the southern lines from the crossings to destination, these being the same from all crossings, while from proportional rate territory the same factor is used south of the Ohio River, but proportional rates less than

the local rates are used north of the river. Local rates vary to the different crossings and when they are applied north of the river the through rate is the lowest combination by any Ohio River crossing or through the Virginia cities. From proportional rate territory the through rate is the same proportional rate to the river crossings, Cairo, Ill., to Cincinnati, Ohio, inclusive, plus the rate south to destination. This adjustment results in a higher rate basis from complaining cities' territory than from proportional rate territory.

Excepting the Chicago & Eastern Illinois Railroad and the roads having no lines south of Chicago, the lines both north and south of the Ohio River, which participate in the traffic under the rates to the southeast from either proportional rate territory or complaining cities' territory, are parties defendant. Parts of proportional rate territory are served only by those defendant carriers who also serve complaining cities' territory, and the southern carriers making deliveries at destinations are usually parties to the rates from both the proportional rate territory and the complaining cities' territory.

Prior to 1878 efforts were begun to adjust the rates to the southeast from the east, of which the rates from New York City and Baltimore, Md., may be taken as representative; and from the west, of which those from St. Louis, Mo., and Chicago, Ill., are representative. Atlanta, Ga., is a representative point for the southeast. These efforts, participated in by the carriers, including steamship lines, engaged in the transportation from New York and Baltimore to Atlanta and by the carriers participating in the traffic from and through Chicago, St. Louis, and Louisville, Ky., to the same point, are said to have had as their object an agreement which would prevent rate wars between the two sets of carriers, and which would result in a fair basis of rates. For a short time in 1880 a percentage basis prevailed. Using rates to Atlanta, the Baltimore rate being taken as 100 per cent, the other percentages were: New York, 106; Louisville, Ky., 100 on numbered classes, and 94 on lettered classes; St. Louis, 118; and Chicago, 130. Subsequently many conferences were held, in which the defendants serving St. Louis, Chicago, and complaining cities' territory participated, but generally without reaching any agreement. Differences as to divisions between lines north and lines south of the Ohio River were the principal causes of these failures to agree. On April 19, 1905, at a meeting of interested carriers, a resolution was adopted containing among other statements the following:

Be it further resolved, That it is the sense of the Chicago-Ohio River lines that they are in favor of making any reasonably fair reduction in rates from

their territory to the territory of the southeast on the condition that the same rates be divided between the carriers north and south of the Ohio River on an equitable basis.

Neither the Illinois Central Railroad nor the St. Louis & San Francisco Railroad, called the Frisco system, then owning the Chicago & Eastern Illinois Railroad, voted on this proposition. Another meeting of the Chicago-Ohio River committee was held May 12, 1905. At this meeting a representative of the Illinois Central offered and a representative of the Frisco seconded a motion as follows:

I do not know your procedure in this office, but we would recommend that proportional rates from Chicago to Ohio River on southeastern business be reduced, the first six classes, May 16, 5, 4, 3, 2, 2, 2 cents per 100 pounds, this being the same reduction as has been made from St. Louis on the 15th.

According to the witness this motion was voted down by "practically all of the interested carriers."

Notice to produce the minutes of this meeting was served on defendants, who declined to produce, claiming that they were irrelevant and immaterial. Subsequently the witness who testified that the motion set out above was made, offered in evidence a copy of the record taken at that meeting. This record follows:

**EXTRACT OF PROCEEDINGS OF MEETING OF CHICAGO AND OHIO RIVER
COMMITTEE, FRIDAY, MAY 12, 1905.**

CENTRAL FREIGHT ASSOCIATION, CHICAGO AND OHIO RIVER COMMITTEE

*Proceedings of a special meeting of the chief traffic officials held in secretary's
office, Chicago, Ill., Friday, May 12, 1905.*

Representation:

B. & O. S. W. R. R.	S. T. McLaughlin, by J. B. Hill.
O. & A. Ry.	J. W. Blaboon.
C. & E. I. R. R.	S. J. Cooke, Theo. Brent.
C. & E. R. R.	S. P. Shane, C. L. Thomas, W. D. Scott.
O., O., C. & St. L. Ry.	G. H. Ingalls, C. Tillinghast.
C., H. & D. Ry.	F. A. Wann, A. H. McLeod.
O., I. & L. Ry.	C. H. Rockwell, O. C. Carter.
E. & T. H. R. R.	D. H. Hillman, by S. J. Cooke.
I. C. R. R.	F. E. Bowes, W. E. Keepers.
P., O., C. & St. L. Ry.	D. T. McCabe, J. B. Hill, M. S. Connelly.
So. Ry. (St. L.-L. division)	R. A. Campbell.
Vandalia R. R.	Wm. Hodgdon, by J. B. Hill.
Wabash R. R. Co.	E. R. Newman.

Meeting convened at 11.00 a. m., O. E. Fulton presiding.

SUBJECT No. 1127.—*Class rates from Chicago and Milwaukee to Ohio River crossings applicable on southeastern traffic versus rates from St. Louis and East St. Louis to Cairo and Evansville on southeastern traffic.*

File 1268.

Chairman stated this was an adjourned meeting from Tuesday the 9th inst., and was convened for the purpose of discussing class rates Chicago to Ohio River crossings applicable on traffic destined to southeastern territory, versus the rates to be made effective the 15th inst., from St. Louis and East St. Louis to Cairo and Evansville on similar traffic, the reduction being from 28, 23, 20, 14, 12, 10 to 23, 19, 17, 12, 10, 8.

Reference was made to the several conferences held in New York and Chicago between representatives of southern, eastern, and northern lines as to the general merchandise rates from Chicago, St. Louis, and East St. Louis into the southeast, versus from New York, etc., and the result of final discussion was the announcement that effective May 16, 1905, the proportional rates from Chicago and points taking same rates to north bank Ohio River crossings applicable on southeastern traffic governed by southern classification, in so far as classes 1 to 6, inclusive, are concerned, be made the following figures:

Classes-----	1	2	3	4	5	6
Cents per 100 pounds-----	35	30	22	15	13	10

with the usual differentials to apply from Milwaukee and points taking same rates.

In connection with the foregoing the announcement was made and generally understood by all interests that the proportional rates above named will not be made applicable to the Ohio River crossings proper, and that in placing Chicago, Milwaukee, and points taking same rates in line with the rates to be made effective 15th inst., from St. Louis and East St. Louis, it was not expedient or deemed necessary to make any changes in the present rates from any other points.

As reductions in classes 1 to 6, inclusive, from Chicago and Milwaukee to Ohio River crossings take effect 16th inst., general request was made that the Commission be wired that the through rates covered by tariff 13-G. L. and supplements in effect will be the following figures less than published:

Classes-----	1	2	3	4	5	6
Cents per 100 pounds-----	5	4	3	2	2	2

and that a division sheet also be issued effective the 16th inst., specifying the proportions that accrue from Chicago, Milwaukee, and points taking same rates to north bank Ohio River crossings of the through rates as published.

Other matters of detail were presented for consideration, in connection with which opinion prevailed that the general committee at its regular meeting on the 17th inst., would take care of.

Adjourned.

C. E. FULTON, *Chairman.*

While the proceedings copied above purport to be an "extract," an attorney for the lines having their southern termini at the Ohio River said at the hearing: "There are the full proceedings. It is true that the word 'extract' is there, but there are no other official proceedings that we have."

The reduced rates were published from St. Louis May 12 and from Chicago May 16, 1905. It is these rates from Chicago which

it is now contended constitute an undue preference of Chicago and the territory called prorating territory.

In addition to publishing the proportional rates named, southern classification was applied from points of origin, Chicago or elsewhere in proportional territory, and by the use of this classification lower through rates obtain on many commodities than would have resulted from an application of official classification for the movement to the Ohio River. In cases where the official classification results in lower rates than the southern, the lower basis is applied by publishing to the river, for points in the southeast, commodity rates from proportional territory equal to the combination of the rates resulting from the application of the official classification. These proportional rates, and the application of the classification which makes the lowest rate, were voluntarily extended to points in northeastern Illinois, southeastern Michigan, and northwestern Indiana, the reason for some of such extensions, according to the testimony of a witness for defendants, being "pure unadulterated sentiment." The proportional rate basis was published prior to May 12, 1905, from South Bend, Ind., which point is not reached by the Illinois Central or the Chicago & Eastern Illinois.

When proportional rates were established in 1905, the Illinois Central, in addition to its lines running west from Chicago, operated a line from Chicago south via St. Louis and Memphis, Tenn., to New Orleans, La.; with a branch line running north of east from Effingham, Ill., to Indianapolis, Ind.; a branch line from Peoria, Ill., crossing the main south line at Mattoon, Ill., and thence southeast through Princeton, Ky., to Hopkinsville, Ky.; and a line from Fulton, Ky., running northeast through Princeton to Louisville, Ky. In 1905 the Illinois Central did not reach with its own rails any of the destination points the rates to which are here involved. Later, April 19, 1908, this road obtained trackage rights by which it entered Birmingham, Ala.

In 1905 the Chicago & Eastern Illinois Railroad was controlled by the Frisco system. The Chicago & Eastern Illinois then operated north and south lines from Chicago to St. Louis, Evansville, and points near Cairo and from La Crosse, Ill., to Evansville. At St. Louis it connected with the Frisco and by the line of that carrier reached Birmingham via Memphis. The Chicago & Eastern Illinois no longer belongs to the Frisco, although there is a very close traffic arrangement between the two companies.

Peoria is given the Chicago rate basis to the southeast. Milwaukee obtained the benefit of the proportional rates because the rates from Milwaukee and other territory north and west of Chicago to the southeast are made by the addition of fixed differentials over the

rates from Chicago to the same points. When the traffic originates in Milwaukee rate territory the carriers obtaining the haul from Chicago to the Ohio River receive as their division less than the proportional rates from Chicago to the same points.

Defendants other than the Illinois Central explain their consent to the publication of the proportional rate basis by saying that the action of that road and the Frisco system placed the lines operating to Cincinnati, Jeffersonville, and New Albany and connecting with southern lines at these points in the position of having either to go out of the Chicago-southeastern business or accept the very low proportional rates north of the river fixed by the Frisco line and the Illinois Central Railroad; and that the Illinois Central and the Frisco lines had their own rails running direct from Chicago to points in the south, while the rails of the Chicago roads operating via Cincinnati or Louisville extended only to those points.

While the carriers in central freight association territory, under the permission granted in the *Five Per Cent Case*, 31 I. C. C., 351, have increased their local rates from complaining cities' territory to the Ohio River, the proportional and special commodity rates described above have not been increased.

Manufacturing plants are numerous both in complaining cities' territory and in proportional territory. These, to a large extent, buy raw materials and sell their manufactured products in common markets. The general commercial conditions in the two territories are quite similar. In each the many and different kinds of manufacturers produce in the aggregate large quantities of goods which find markets in the southeast. Paint manufacturers in Chicago compete with paint manufacturers in Detroit, Mich., for the trade of the southeast; similarly manufacturers of farm and road machinery compete with factories in the two rate territories involved.

There are numerous tables of record contrasting the rates from complaining cities' territory with those from proportional rate territory.

Through distances, using Atlanta as representative of the southeast, appear from the following table:

To Atlanta, Ga., from—	Miles.
Toledo, Ohio.....	675
Cleveland, Ohio.....	719
Detroit, Mich.....	733
Springfield, Ohio.....	553
Dayton, Ohio.....	528
Columbus, Ohio.....	590
Canton, Ohio.....	707
Average.....	643

43 I. C. C.

To Atlanta, Ga., from—	Miles.
Chicago, Ill.....	729
Milwaukee, Wis.....	814
Rockford, Ill.....	817
Decatur, Ill.....	615
Peoria, Ill.....	692
South Bend, Ind.....	764
Benton Harbor, Mich.....	787
Average.....	745

The through rates, again using Atlanta as fairly representative, are:

To Atlanta, Ga., from—	1	2	3	4	5	6
Toledo, Ohio.....	133.7	118.0	101.6	78.8	65.1	51.5
Cleveland, Ohio.....	136.9	120.6	102.2	78.8	65.7	51.5
Detroit, Mich.....	138.4	221.7	103.7	80.3	66.7	52.6
Columbus, Ohio.....	124.3	110.1	98.5	76.1	62.0	49.4
Dayton, Ohio.....	113.2	100.7	90.6	73.5	59.9	47.8
Springfield, Ohio.....	118.5	106.4	95.9	74.6	60.9	48.9
Canton, Ohio.....	136.9	120.6	102.2	78.8	65.7	51.5

To Atlanta, Ga., from—	1	2	3	4	5	6	A	B	C	D	E	H
Chicago, Ill.....	133	117	100	78	65	51	40	48	38	34	61	63
Peoria, Ill.....	133	117	100	78	65	51	40	48	38	34	61	63
Milwaukee, Wis.....	139	122	104	81	67	53	42	50	40	36	63	65

A comparison of the first-class rates, in cents per 100 pounds, to Cincinnati, using Chicago as representative of proportional rate territory, and Cleveland, Toledo, and Detroit as representative of complaining cities' territory shows:

From—	Distance (miles).	First-class rate.
Cleveland.....	245	38.9
Toledo.....	201	35.7
Detroit.....	259	40.4
Chicago.....	285	¹ 42.0
Do.....	285	² 35.0

¹ Local rate.

² Proportional rate.

On many articles the lower class basis accorded in southern than official classification accentuates the advantages the corresponding rate differences give the proportional rate cities. The special commodity rates applied from proportional rate territory when there are no such commodity rates from complaining cities' territory also give an advantage to the preferred territory.

As no attack is made on the factor of the through rate from the crossings south to destinations, no detailed reference to these rates is necessary.

The absorptions for switching at Chicago which carriers must pay are probably higher than, certainly as high as, at the points in complaining cities' territory.

As to density of traffic and other conditions affecting the cost of transportation, complaining cities and other localities in whose behalf the complaint was filed are as favorably located as are the localities which have been accorded the lower rates.

While there are allegations that the through rates from complaining cities' territory to the southeast are unjust and unreasonable, the principal claim is that the relationship of the rates is unlawful. The factors of the through rates which are attacked are those which apply north of the river crossings and are the rates permitted to be increased in the *Five Per Cent case, supra*. The southern factor is not attacked and is in harmony with a rate relationship between eastern cities and Ohio River cities, a relationship which we have not found unreasonable when it was attacked. *Receivers & Shippers Assn. v. C., N. O. & T. P. Ry. Co.*, 18 I. C. C., 440. The tables above show through rates that result in car-mile and ton-mile earnings which compare favorably with other rates in territory where the transportation conditions are similar. Practically the only basis for the claim that the rates assailed are unreasonable is the existence of lower rates from proportional rate territory. The record is not sufficient to justify a finding that the rates under attack are unjust and unreasonable.

That a preference and advantage result to shippers and localities in proportional rate territory from the application of the rate relationship assailed can not be disputed, and practically was not disputed by defendants. It is equally clear that shippers from the complaining cities' territory to the southeast actually do compete in that market with shippers from proportional rate territory, and that the relationship constitutes a substantial handicap and a prejudice and disadvantage to complainants and the localities for which they bring complaint. Defendants contend that such preference on one side and prejudice and disadvantage on the other are not undue or unreasonable because of the situation resulting from the location of the lines of the Illinois Central and the Chicago & Eastern Illinois railroads, and the former ownership of the latter by and its present relationship with the Frisco system.

As heretofore shown, the carriers having lines from both the territories here under discussion to the Ohio River crossings, those extending south from the Ohio River, and those with lines both north and south of that river, have for nearly a half century acted on the principle that the territory lying north, west, and northwest from the river crossings should have such a rate relationship as would permit

the competition of such territory with eastern cities in the markets of the southeast. Different methods of obtaining the end sought have been adopted, but the principle has been constantly applied by all the carriers of the three classes named above. It is true that there have been different views as to the method of applying the principle, but the rate-making policy by which the west has been enabled to compete with the east has never been abandoned. The policy itself has resulted in giving the west an outlet for its products, in giving the carriers the opportunity to haul such products, and in giving the south competing markets. The latest application of the uniformly accepted policy of rate equalization between the west and the east on shipments to the southeast is the proportional rate basis and the extension of southern classification. As appears from the proceedings of the joint meeting of the roads, copied above, the proportional rate basis was adopted in 1905 after conferences with eastern, southern, and western lines and as the "result of final discussion." These proceedings show that roads other than the Illinois Central and Chicago & Eastern Illinois agreed to the proportional rate basis. What defendants have done is to apply this rate policy, mutually beneficial to shipper and carrier, unequally to the two sections of the west represented by the proportional rate territory and the complaining cities' territory.

Although the official minutes, said by defendants' attorney to be the complete record, do not so show perhaps, the Illinois Central and the Frisco system, including at that time the Chicago & Eastern Illinois, were the principal roads proposing this particular method of applying the half century old principle. If they were, they could not alone have published the rates alleged to be prejudicial to complainants. The Frisco system could then have reached Birmingham, Ala., but no other point of destination involved. The Illinois Central could not then have reached any of such points. The cooperation of other southern carriers was necessary to all points save Birmingham. The Illinois Central and the Chicago & Eastern Illinois, like the other carriers having rails north of the Ohio River, deliver traffic to southern carriers at some river crossings, receiving only the proportional rates to the crossing. Much of proportional rate territory is not reached by the Illinois Central or the Chicago & Eastern Illinois, nor intermediate to any points so reached. The extensions of proportional rate territory since 1905 have not been made in a consistent manner. It is stated, moreover, that the two carriers upon whom it is now sought to place the responsibility for a preferential rate system have not been in accord with this action. These facts differentiate this case from those cases cited and relied on by defendants, of which

Ashland Fire Brick Co. v. S. Ry. Co., 22 I. C. C., 115, is typical. In that case we said:

It is true that we have held in cases where joint or proportional rates were made by all of the carriers leading to certain points of destination that it was within our power to end a discrimination as between points of origin by a reduction in the rate from a certain point that was discriminated against. *Indiana Steel & Wire Co. v. C., R. I. & P. Ry. Co.*, 16 I. C. C. Rep., 155; *Railroad Commission of Tennessee v. Ann Arbor R. R. Co.*, 17 I. C. C. Rep., 418. This principle, however, only has application where the traffic from both groups of origin is necessarily transported to destination by the same connecting carrier or carriers and where it is possible for the delivering carriers to put an end to the discrimination by the exercise of their power to refuse to enter into preferential joint or proportional rates.

This language applied to the facts of this case sustains the theory of complainants rather than that of the defendants.

This case is, however, determinable on even broader grounds. The defendants can not escape the consequences of their long voluntary practice, which they began before and have continued since 1905, and the application of which they have since broadened by extensions of the proportional rate territory. Nor can a group of carriers establish a peculiar system of rate making and arbitrarily limit its territorial application. That this system was withdrawn from territory around Indianapolis and is sought to be withdrawn from South Bend and related territory does not alter the facts. The Indianapolis situation was before us in *Indianapolis Chamber of Commerce v. C., C. & St. L. Ry. Co.*, 34 I. C. C., 267, and the South Bend situation was discussed in *Proportional Rates to Ohio River crossings*, 43 I. C. C., 458.

The controlling principle here is that which we applied when a part of the situation now involved was before us. In *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.*, 22 I. C. C., 93, the claim was made that the application of local class rates governed by official classification on vehicles from Toledo to Ohio River crossings and Virginia cities was discriminatory as compared with proportional rates governed by southern classification from Chicago and other points taking Chicago rates. There, as here, it was claimed that the Illinois Central was responsible and the lines serving nonproportional rate territory guiltless. We there said:

Assuming that the rates from Chicago to a considerable part of the south and southeast are made and largely controlled by the direct line of the Illinois Central, these defendants have elected to meet via their lines and the various Ohio River and Virginia cities gateways the rates so made from Chicago, and to accord somewhat similarly favorable rate adjustments to other points east of Chicago. May they do that and continue to disregard the manifest undue discrimination so caused against this complainant? May they select certain points of production on their lines and give to them the benefit of rates that permit

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meeting the competition of producers located upon other lines and deny similar treatment to other producing points upon their lines that are similarly situated and as to which the same and long-established general basis of rates applied? Obviously not.

The principle quoted has been followed by us in later cases, and it is a just principle. The relationship of rates here assailed is not one forced on defendants by the Illinois Central, the Chicago & Eastern Illinois, nor by both together.

Upon the whole record we are of opinion and find: That the present class rates from complaining cities' territory to points in the southeast described in the complaint, made by the application of the present local rates to the Ohio River, governed by official classification, are unduly and unreasonably prejudicial and disadvantageous to complainants and the localities included in complaining cities' territory and unduly and unreasonably preferential of and advantageous to shippers and localities in proportional rate territory; that such unlawful relationship will continue while defendants contemporaneously maintain the present proportional class rates governed by southern classification from proportional rate territory and special commodity rates not accorded complaining cities' territories; that rates to the southeast from both territories should be governed by the same classification, and that proportional rates accorded one territory should be accorded the other on the same basis.

Defendants, as they participate in the traffic, will be ordered to cease and desist from the unlawful relationship of rates found to exist, and they will be required to establish and maintain rates to the southeast, the factor of which north of the Ohio River shall be nondiscriminatory.

HARLAN, *Commissioner*, dissents.
U. S. C. C.

FOURTH SECTION APPLICATIONS Nos. 1604 AND 10215.
PROPORTIONAL RATES FROM POINTS IN ILLINOIS,
INDIANA, IOWA, MICHIGAN, MISSOURI, AND WISCON-
SIN TO OHIO RIVER CROSSINGS.

Submitted June 15, 1916. Decided March 13, 1917.

Fourth Section Application No. 1604 of C. E. Fulton, agent, for and on behalf of the carriers named in said application, by which authority is sought to continue to charge proportional rates from points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin to Ohio River crossings which are lower than rates contemporaneously applicable on like traffic from intermediate points, denied.

2. Fourth Section Application No. 10215 of E. Morris, agent, for and on behalf of the carriers named in said application, by which authority is sought to cancel proportional rates from points in Indiana, Illinois, and Michigan to Ohio and Mississippi river crossings, on traffic destined to southern territory, without observing the long-and-short-haul provision of the fourth section, denied.

Ernest S. Ballard and L. E. Hinkle for petitioners.

A. P. Humburg for Illinois Central Railroad Company.

H. C. Lust for Studebaker Corporation and Oliver Chilled Plow Works.

L. R. Martin for South Bend Chamber of Commerce.

W. L. Dryer for Sidway Mercantile Company.

A. G. Wattes for Wilson Brothers.

G. C. Shobe for Dodge Manufacturing Company and Dodge Sales & Engineering Company.

Frank E. Coombs for Baker Vawter Company, Benton Harbor Association of Commerce, and St. Joseph Association of Commerce.

O. A. Fulkerson for O'Brien Varnish Company.

Geo. M. Studebaker, jr., for Sibley Machine Company.

C. F. Smith for South Bend Chilled Plow Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This is an investigation respecting Fourth Section Application No. 1604 of C. E. Fulton, agent, hereinafter referred to as Fulton's application, for and on behalf of the carriers named in said application, by which they ask for authority to continue to charge pro-

portional rates from points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin, known as the Chicago, Milwaukee, Peoria, and Davenport groups, to Ohio River crossings, as shown in said application, which are lower than rates contemporaneously applicable on like traffic from intermediate points; and Fourth Section Application No. 10215, of E. Morris, agent, hereinafter referred to as Morris's application, for and on behalf of the carriers named therein, by which they ask for authority to cancel proportional rates from certain points in Indiana, Illinois, and Michigan specified in said application and hereinafter referred to as the proposed South Bend group, to Ohio and Mississippi river crossings on traffic destined to southern territory, and to apply in lieu thereof the local scale of class rates applicable between said points.

Fulton's application seeks authority to continue deviations from the rule of the fourth section which existed at the time that section was amended on June 18, 1910, while Morris's application requests authority to create new departures from the rule of the fourth section by canceling the proportional rates from the proposed South Bend group to Ohio River crossings, leaving the higher local class rates to apply without, at the same time, making a corresponding change in rates from the more distant points located in the Chicago, Milwaukee, and Davenport groups above referred to. The territory of origin covered by these applications embraces the northern half of the state of Illinois; the west bank of the Mississippi River north of West Alton, Mo., to and including Dubuque, Iowa; a portion of southern Wisconsin; the southwestern corner of Michigan; and the northwestern portion of Indiana.

The accompanying map shows the boundaries of the territory and group arrangement from which the present and proposed rates apply or are sought to be applied, and will facilitate an understanding of the scope and purpose of both applications. Rates are stated herein in cents per 100 pounds.

The present proportional rates from the proposed South Bend group are governed by the southern classification, as are the other proportional rates, and are the same as from the Chicago and Peoria groups to Ohio and Mississippi river crossings, namely:

Classes -----	1	2	3	4	5	6
Rates-----	35	30	22	15	13	10

The rates from the Milwaukee and Davenport groups are on a differential basis over the Chicago and Peoria groups, and are as follows:

Classes -----	1	2	3	4	5	6
Rates-----	41	35	26	18	15	12

The rates from the intermediate points south of said groups are the local class rates governed by the official classification. The rates that petitioners desire to apply from the proposed South Bend group are also the local class rates governed by the official classification, as follows:

Classes -----	1	2	3	4	5	6
Rates -----	42.0	35.7	28.3	17.9	15.8	12.6



The testimony submitted in support of the relief prayed is voluminous, but, aside from that pointing out the specific departures from the fourth section that are protected by Fulton's application and the departures which it is desired to create by Morris's application, it consists chiefly of a history of the establishment of the proportional rate scale from Chicago and related groups. Numerous statements of rate comparisons were filed for the purpose of showing that the

rates from Chicago and the other low-rated groups mentioned are low for the service performed, and that the proposed class rates from the South Bend group are reasonable. However, in disposing of these applications it is not necessary to go into the reasonableness *per se* of the rates. The primary question is whether or not the justification offered for the relief prayed under these applications constitutes a special case such as is contemplated by the amended fourth section and warrants the Commission in granting relief from the operation of the long-and-short-haul rule thereof. It will be unnecessary, therefore, to show any rates other than those already noted.

The history of the rate adjustment from Chicago and related groups to Ohio River crossings on traffic destined to southern points in what is commonly known as green line territory, develops the fact that eastern competition was the controlling reason for the establishment of proportional rates from the said groups to the Ohio and Mississippi river crossings. Green line territory includes all points south of the main line of the Norfolk & Western Railway from Portsmouth, Va., to Bristol, Tenn., thence south of the Kentucky-Tennessee state line east of the Illinois Central Railroad and east of the Illinois Central and Mobile & Ohio railroads passing through Jackson, Tenn., Tupelo and Meridian, Miss., to, but not including, Mobile, Ala. In these cases, however, we are dealing only with the proportional rates to the river crossings.

According to the undisputed evidence, the water-and-rail lines from Baltimore fixed the rates to green line territory in the early eighties, and the rail lines from Louisville met those rates on traffic originating in central freight association territory. At the same time the western lines from St. Louis and Chicago, in order to enable the shippers at those points to compete with the east in the southern markets, established rates to Ohio River crossings on percentages of the rates from Louisville to green line territory.

Between 1882 and 1896 many changes were made in the rates both from the east and the west, as a result of active competition between the eastern and western carriers for this southern business. In February, 1905, the eastern lines made further reductions in their rates to the south, and this was followed by corresponding reductions from Louisville and other Ohio River crossings, and also from St. Louis. Rates from the latter point were made by adding certain fixed arbitraries to the rates from Cairo, Paducah, and Evansville. As a result of negotiations with St. Louis interests the carriers reaching the Ohio River and St. Louis, and known as the St. Louis-Ohio River lines, notably the Illinois Central and the Chicago & Eastern Illinois, further reduced the rates to the river crossings by the fol-

lowing amounts: 5, 4, 3, 2, 2, and 2 on classes 1 to 6, respectively. In April, 1905, at a meeting of the carriers reaching Chicago and the Ohio River, known as the Chicago-Ohio River lines, it was proposed to make the same reductions in the rates from Chicago to the Ohio River crossings on traffic destined to green line territory as had been made from St. Louis, the reductions to be taken from the divisions accruing to the lines north of the Ohio River. This was opposed by all of the interested carriers except the Illinois Central and the St. Louis & San Francisco railroad companies, the last-named company then controlling the Chicago & Eastern Illinois. Notwithstanding the opposition of the other lines the Illinois Central and the Chicago & Eastern Illinois published, effective May 17, 1905, proportional rates from Chicago to Cairo, Paducah, and Evansville, applicable on traffic destined to green line territory, as above shown, whereupon the same rates were at the same time established to all the crossings via all lines and are still in effect. The rates via the Illinois Central and the Chicago & Eastern Illinois are observed as maximum from intermediate points.

The other Chicago-Ohio River carriers urge in support of the relief prayed by Fulton's application that the rates from the Chicago and Peoria groups were made and are controlled by the Illinois Central Railroad Company, and that if they are to participate in the traffic from Chicago and Peoria they must do so at the same rates carried by the Illinois Central. Furthermore, that the Illinois Central has its own rails south of the Ohio River, and because of this fact it gets its full local south of the river, and it could well afford to haul the traffic to the crossings on lower proportional rates than other Chicago-Ohio River lines.

The 35-cent Chicago scale of class rates was not made applicable from that portion of the Chicago group referred to herein as the proposed South Bend group until June 18, 1908, but during the period from 1905 to 1908 the same rates were applied from that group by commodity tariffs.

APPLICATION NO. 10215.

Morris's application No. 10215, filed July 24, 1915, now seeks authority to cancel from the proposed South Bend group the proportional rates governed by southern classification to the Ohio River crossings, Thebes and Thebes Transfer, Ill., on traffic destined to points in green line territory, and to apply the higher local rates governed by official classification. From the remainder of the Chicago group and from the Peoria, Milwaukee, and Davenport groups it is desired to continue the proportional rates now in force on the traffic in question. This application therefore amends Fulton's application No. 1604 by reducing the extent of the farther distant territory

from which it is desired to carry lower rates, and to that extent enlarging the intermediate territory from which it is proposed to carry higher rates. We shall therefore discuss the questions involved in Morris's application first.

The principal cities affected by this application are South Bend, Mishawaka, Elkhart, Ind., and Benton Harbor, Mich. The territory involved has a population of approximately 100,000, and large manufacturing industries are located there. These manufacturers are in keen competition not only with eastern manufacturers of the same commodities, but with those located in Chicago as well. According to the undisputed evidence, the proposed South Bend group has enjoyed the Chicago basis of rates on traffic to the southeast for a period of many years, for the reason, as stated in Morris's application and admitted by witnesses for the carriers, that the said rates were extended to apply from points east of the Indiana-Illinois state line, the proposed South Bend group, because carriers considered it "necessary" that said points be placed on a parity with Chicago. The protestants strongly object to a disturbance of the present adjustment which would have the effect of applying higher rates from the proposed South Bend group than from the Chicago, Peoria, Milwaukee, and Davenport groups, thereby placing manufacturers located in the proposed South Bend group at a substantial disadvantage as compared with manufacturers located in the other groups named, and also with the eastern manufacturers.

Witnesses for the carriers said that the word "necessary" in the petition was badly chosen, and that there was really no necessity for extending the Chicago basis to the South Bend group, and that this action was taken merely because it was deemed expedient to do so as a matter of traffic policy. However, as disclosed by the record, the real reason for Morris's application was a formal complaint in *Traffic Bureau, Toledo Commerce Club v. C., H. & D. Ry. Co.*, 43 I. C. C., 446, wherein it is alleged that complainants are subjected to undue discrimination by reason of the 35-cent scale from South Bend and the territory east of the Indiana-Illinois state line, the proposed South Bend group, and because the rates having been voluntarily established by the carriers, the complainant had used them as a basis for measuring the reasonableness of the Toledo rates. This is demonstrated by the admission of the assistant freight traffic manager of the New York Central lines, who testified, in answer to a question by the examiner, as follows:

EXAMINER. Then your whole reason, I believe, as you have stated, in desiring to withdraw the Chicago adjustment from South Bend, putting South Bend on a higher basis, is to remove the cause of complaint by the Toledo people of discrimination under the third section of the act?

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Mr. WEBSTER. Yes, sir; so far as the discrimination between Toledo and South Bend is concerned.

The carriers urged in support of Morris's application that the establishment of these proportional rates was not warranted by any reason other than sentiment, and that that action is now looked upon as an error of judgment; that the normal basis for rates to southeastern territory from points east of the Indiana-Illinois state line is the combination of local rates governed by the official classification to the Ohio River and the local rates beyond governed by the southern classification; that the carrier competition of the Illinois Central which forces them to maintain the proportional rates from Chicago does not obtain at points in the proposed South Bend group, and those rates should therefore be confined to Chicago and points in proportional territory west of the Indiana-Illinois state line; hence they now seek to rectify the alleged error of establishing that basis from the South Bend group.

It was admitted by the witnesses for the carriers that the Chicago basis of rates was voluntarily established from the South Bend group to enable manufacturers located in that group to compete in the southeast on even rate terms with competing manufacturers located in the eastern cities, at Chicago and other points, and that the same manufacturing and rate competition still exists.

The claim of error or sentiment as an excuse for increasing a long existing rate adjustment has been urged in many cases before the Commission. In a situation such as is here presented, where the adjustment which it is sought to change was voluntarily established by the carriers and has been in force for many years, the allegation of error is not persuasive. In disposing of a similar contention in *Nebraska Bridge Supply & Lumber Co. v. N., O. & St. L. Ry.*, 35 I. C. C., 86, we said, at page 89:

Its assertion that these rates were established as an experiment and proved to be a mistake comes too late at the end of 14 years.

And in *Franklin, Stiles & Franklin v. Southern Express Co.*, 21 I. C. C., at page 89:

Nor can we concede that the alleged erroneous publication of a rate which remains in effect for a period of more than eight years is a sufficient reason for its increase.

The South Bend group is situated in a highly competitive producing district, and on traffic to green line territory manufacturers located in that group are compelled to meet competitive conditions in both originating and destination territories.

When an important and long standing relation, such as that here considered, is sought to be changed, the justification must be clear

and convincing. *Reshipping Rates on Grain from Omaha*, 32 I. C. C., 590, 594; *Grain Rates in Central Freight Association Territory*, 28 I. C. C., 549, 555; and *Class and Commodity Rates to and from Quincy, Ill.*, 32 I. C. C., 471, 478.

The right of a carrier so to adjust its rates as to prevent one community from competing with another, or keep the products of one community out of a territory, the wants of which may be fully supplied by another community, has never been recognized by the Commission. *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, 26 I. C. C., 58.

The duty imposed by law is to give equal treatment to all shippers, and this includes the right to reach competitive markets on relatively equal transportation terms. Carriers are not required by law, and could not in justice be required or permitted, to equalize natural disadvantages, such as location, cost of production, and the like. Where, however, the same carrier serves two districts, which, by their location, the character of their output, and distance from markets where their product must be disposed of, are under substantially similar circumstances and conditions, as in the instant case, the serving carrier can not, lawfully, prefer one to the other in any manner whatsoever. If, as they contend, carriers may, and frequently do, establish and maintain rates lower than they could be required to publish, to meet competitive or other conditions at a particular point, they are not thereby relieved from the obligation imposed by law to remove unjust discrimination which may arise from meeting competition or other conditions at one point and refusing to meet the same conditions at another point entitled to the same consideration. *Black Mountain Coal Land Co. v. So. Ry. Co.*, 15 I. C. C., 286, 292; *Suffern Grain Co. v. I. C. R. R. Co.*, 22 I. C. C., 178.

In *Southern Furniture Mfrs. Asso. v. S. Ry. Co.*, 25 I. C. C., 379, in considering Fourth Section Application No. 1548 of the Southern Railway Company, for itself and on behalf of its connections, by which authority was sought to continue lower rates on furniture and chairs from points in Virginia to Pacific coast terminals and Pacific slope points than were contemporaneously maintained upon the same commodities from intermediate points in Carolina territory to the same destinations, the Commission said, at page 386:

Granting that there must be a line drawn somewhere to mark the limits of application of blanket rates and that it does not follow that because industries in certain territories are given stated rates, carriers must perforce extend the same rates to all factories of the same kind wherever located, nevertheless that boundary line may not be so artificially established as to subject shippers immediately outside the favored zone to unjust discrimination, and we hold

It indefensible that such shippers should be denied as favorable rates to coveted markets as are accorded throughout a considerable portion of the country to competitors producing the same class of goods, selling in the same manner, and no more advantageously located geographically or commercially.

In the above case the Southern Railway contended that the rates from the Virginia cities were beyond its control, as they were made by the strong trunk lines to meet water competitive conditions at the Virginia points, and that it was therefore forced to apply the same rates as were in effect via the trunk lines if it was to participate in any traffic between the points involved; that from the intermediate points in Carolina territory there was no such competition; and that its route from the Virginia cities was not the short line. Notwithstanding this contention, the Commission found the existing adjustment to be unjustly discriminatory against the intermediate Carolina manufacturers and denied fourth section relief.

By reason of its geographical location the proposed South Bend group is entitled to compete at least on equal terms with the more distant market of Chicago, and, as before shown, the present adjustment of proportional rates from this group was voluntarily established by the carriers and is of long standing.

In *Freight Rates from Minnesota Points*, 32 I. C. C., 361, this Commission said, at page 364:

Undoubtedly the fact that a rate has been voluntarily maintained by a carrier for a period of years is evidence tending to show that it is reasonably remunerative, and when such a rate is sought to be increased the burden on the carrier would seem to require stronger proof of justification than in a case where the proposed increase relates to a rate that has been in effect but a short time.

The applicants desire to continue to participate in the traffic west of the Indiana-Illinois state line at the present proportional rates, but to cancel the said rates from the intermediate South Bend group, which rates, it was developed, were established to meet competition from the east and from other points in the proportional rate territory generally. If, then, the petitioners elect to continue to meet the eastern competition from Chicago, Carpentersville, Moline, Rock Island, Davenport, and Milwaukee, more distant points in the same general territory, they can not arbitrarily single out a similar competitive portion of the common territory and decline to meet the eastern competition from that portion of the territory in disregard of the provisions of the amended fourth section.

APPLICATION NO. 1604.

While Fulton's application No. 1604 is based upon the ground of circuitous routes, this is not, however, the case, since rates from intermediate points outside of the group territories via both the

direct and indirect lines parties to his tariff I. C. C. No. A-48, except the Illinois Central and Chicago & Eastern Illinois-Frisco, exceed the proportional rates from Chicago and related groups, and relief is, therefore, sought via both the direct and indirect routes.

While the applicants concede the influence of eastern competition originally upon the rates from Chicago, they contend that the Illinois Central and Chicago & Eastern Illinois-Frisco were primarily responsible for the reduction in the proportional rates from Chicago and related groups in 1905, and that that adjustment was forced upon them by those carriers. The Chicago & Eastern Illinois serves Chicago and points south to Evansville and Thebes and in connection with the St. Louis & San Francisco through Thebes had a through line from Chicago into Birmingham, Ala., in 1905. The Illinois Central serves the principal points of origin in the Chicago, Peoria, and Davenport groups and a portion of the Milwaukee group and reaches Ohio River crossings via its own rails. In 1908 it extended its line into Birmingham from Jackson, Tenn. The applicant Chicago-Ohio River lines operating east of the Indiana-Illinois state line, with the exception of the Chesapeake & Ohio, which extended its line into Chicago in July, 1910, run only from Chicago to the Ohio River, and therefore receive for the haul to the river crossings no more than their prorated division of the proportional rates applicable to the said crossings. It is urged that since the Illinois Central and Chicago & Eastern Illinois-Frisco operate lines both north and south of the Ohio River and get a complete haul and the rate south of the river to Birmingham, whereas the applicants' lines terminate at the river, the former carriers are in a stronger strategic position to fix the rates to the river crossings, which they have done; that the advantage which thus accrues to those carriers is of such a substantial character as should entitle the applicant competitors to continue the existing higher local rates from intermediate points via all routes, whether direct or indirect.

In respect of the application of the proportional scale on traffic destined to Carolina territory, a portion of green line territory, the applicants state that the rates from Cincinnati and Jeffersonville to Carolina territory are less than from the lower Ohio River crossings, so that it was not necessary to establish the 35-cent proportional scale to Cincinnati and Jeffersonville to meet the competition of the Illinois Central and Chicago & Eastern Illinois-Frisco on that traffic. They stated that the application of that scale on Carolina traffic was also an error and that they are not seeking to justify fourth section relief to Cincinnati and Jeffersonville on Carolina business, but are seeking relief on traffic to destinations in the southeast to which rates are the same from all Ohio River crossings, and then only to the

extent that it may be necessary to carry, on such traffic to Cincinnati and Jeffersonville, lower rates than the local rates in order to equalize the combination on Evansville or Cairo.

The applicant carriers have presented no evidence showing that their lines are at any physical disadvantage in competition with the Illinois Central and Chicago & Eastern Illinois-Frisco by reason of having longer routes, nor in the matter of time, grades, or traffic density between Chicago and the Ohio River crossings, all of which are matters to be considered in determining whether relief from the fourth section is warranted. On the contrary, they admit that they labor under no substantial disadvantage except for the fact that they do not participate in the revenue south of the Ohio River. Their position was stated by counsel, who during cross-examination of the applicants' witnesses upon these matters frankly interposed:

Mr. BALLARD. Your honor, at the risk of arguing this case a little, I would like to point out that this fourth section application has nothing to do with any circuitous route. We are not asking for permission to meet the competition of direct line. The lines through all of the crossings are reasonably direct lines to the southeast; I am not sure which is the shortest, but it is immaterial so far as our position is concerned. Our position is that we meet at Chicago a condition over which we have no control. In most fourth section applications that condition results from the fact that there is a more direct route, but that condition does not result from that fact in this case. It results from totally different facts which have been covered at length by Mr. Webster and Mr. Furry in their evidence, of which copies were introduced, so whether a given route is a direct route or an indirect route, the Ohio River has absolutely nothing to do with the question so far as our position is concerned.

And again:

We admit that, so far as time and grades and traffic density and matters of that kind are concerned between Chicago and the Ohio River, there is no important difference between the Illinois Central and any of the applicants.

The facts disclosed by the record show that the proportional rate adjustment was established from proportional rate territory to meet eastern competition in the southeast and that the applicants whose lines in part compose the short routes to a large portion of that territory have elected to meet this competition not only from Chicago, but from the South Bend group, because, it is asserted, the Illinois Central and another direct route have done so.

One ground of relief urged is market competition. It is difficult to see why the intermediate points here involved have not as intense competition from the east as the more distant points located in proportional rate territory at which the said competition is being met. In the reply brief of the applicants stress is laid upon the fact, and many cases are cited in support of their contention, that the Commission has granted relief from the operation of the long-and-short-haul provision of the amended fourth section of the act be-

cause of market competition. This is true as to points of destination, but in no case has the Commission granted fourth section relief because of market competition as to points of origin where the petitioning carrier has not been shown to be at some substantial disadvantage by reason of having a circuitous route.

In discussing market competition as a reason for relief from the amended fourth section, the Commission said, in *Railroad Commission of Nevada v. S. P. Co.*, 21 I. C. C., 329, at pages 367 and 368:

* * * Market competition must be considered as one of those circumstances affecting a rate situation with which we are called upon to deal. But may it not be said that while the language of the statute does not say that market competition shall not be allowed to justify the charging of the higher rate to the nearer point, the very spirit of the section makes against the free application of any such justifying principle? A national policy may veto a railroad policy just as a public need may overcome and set aside a private desire. Experience has demonstrated to the National Legislature that it is not safe to leave to the carriers the determination of the question what markets should be brought into competition with one another. The policy of Congress seems to be that a railroad may be compelled by transportation competition to make its rates lower than it otherwise would between two competitive points and that this will justify a breach of the prohibition of the fourth section; but the desire of a number of shippers to reach a market is a force to which the carrier may not yield unless it can establish clearly that the adoption of such policy will not unfairly discriminate against one community and in favor of another and will not produce those results which the law was intended to destroy. Clearly to allow for market competition as a sole and controlling factor under the fourth section is to render it nugatory, for this would be tantamount to saying that a railroad could justify every discrimination as between communities by the assertion of nothing more than its own determination of policy.

We must regard the proviso in the fourth section as subordinate to the preceding clause prohibiting the higher rate for the shorter haul, and to carry out this intent of the law a carrier must establish before this Commission, in order to secure an order of exception thereunder, more than merely its own desire to haul a great volume of traffic between two distant points; it must prove that by such a policy it will not impose unreasonable rates upon any intermediate point and that its policy will not work an injustice of which such intermediate point may fairly complain. Unless it does make such proof this Commission is not justified under the law in excusing it from adopting its rates to the more distant point as the basis for rates to the nearer points.

And at page 366:

* * * A community is entitled to something more than a reasonable rate; it is entitled to a nondiscriminatory rate. A carrier may not say "We will give to this community a reasonable rate" and meet the full requirement of the law; it must view its rates as a whole and see to it that they effect no advantage or preference to one community over another which does not arise necessarily out of the transportation advantages which the one has over the other.

So far as this record shows the petitioners are at no disadvantage either in distance, relative strength, or traffic density, and we do

not believe that the justification presented is such as to warrant granting the relief asked.

In view of the facts set forth and from a full consideration of the record we find that the applicants have not established a special case, such as is contemplated by the amended fourth section of the act, and the applications for relief with respect to the rates here under consideration will accordingly be denied.

THE INDIANAPOLIS CASE.

By Fulton's application authority is also asked to continue proportional rates from Indianapolis, Ind., and points taking the same rates to Ohio River crossings on traffic destined to green line territory which are lower than the local rates contemporaneously in force on like traffic from intermediate points. The proportional class rates governed by official classification, which it is sought to continue from Indianapolis and group to the Ohio River crossings, are as follows:

Classes -----	1	2	3	4	5	6
Rates -----	26.3	23.1	20.5	13.1	10.0	8.4

Since the application was filed these rates have been made subject to official classification ratings and are now so governed. This change in classification resulted in some instances in increases in fourth section discrimination for which no relief had been authorized by this Commission, due to differences in classification, the proportional rates from the more distant Chicago group being governed by the southern classification. Applicants stated that this unauthorized increase in fourth section discrimination was inadvertent, and they subsequently provided for the application of the Chicago basis as maximum from the Indianapolis group.

The average short-line distance from Indianapolis to all of the Ohio River crossings is approximately 175 miles. The short-line distances to the several principal crossings are: To Cincinnati, 110 miles; to Louisville, 112 miles; to Jeffersonville, 108 miles; to Evansville, 169 miles; and to Cairo, 277 miles. It will be observed that the direct lines to these crossings, excepting Cairo, are at no disadvantage in the matter of distance as compared with one another.

With the exception of the Illinois Central Railroad Company, none of the carriers operating to Cincinnati, Louisville, and the other upper Ohio River crossings made any serious contention for or justified fourth section relief to continue lower rates from the Indianapolis group to such crossings than from intermediate points.

The Illinois Central serves Indianapolis, Evansville, and Cairo. Its line running from Indianapolis to these crossings passes through the southeastern corner of the Peoria group from which the 35-cent

scale applies. The rates from all points in Indiana on its line are on the Indianapolis basis, and since the above-mentioned points in the Peoria group are intermediate to and on a higher basis than the Indianapolis group and the distances via its line to Evansville and Cairo are greater than to Cincinnati and Louisville, relief is sought to continue the higher rates from the aforesaid intermediate points.

The average distance, however, from the Indianapolis group points on the Illinois Central to Evansville is no greater than the average distance from the Indianapolis group to the crossings shown above. The same may be said of the intermediate points located in the Peoria group from which it is desired to maintain higher rates than from the Indianapolis group.

Under these circumstances it does not appear that the Illinois Central is at such a disadvantage in the matter of distance from any of the points here involved as to warrant relief from the provisions of the fourth section.

The route of the Illinois Central from Indianapolis to Cairo is longer than the average distance to the other crossings, and it is stated that that crossing is preferred to the Evansville gateway.

The position of the Illinois Central is inconsistent in that it is responsible for the establishment of the proportional scale from Chicago under which it observes the fourth section but asks relief in order to meet the competition of the carriers operating from Indianapolis and disregard the fourth section with regard to the identical rates which it established from Chicago. The other petitioners must equalize their disabilities as to distances to Ohio River crossings in participating with the Illinois Central on traffic from Chicago. Therefore, if they are to participate in the traffic and under this report must observe whatever rates they make to the river as maxima at intermediate points, there would be no justification for singling out the Illinois Central and giving it relief from Indianapolis because its own crossing, Cairo, is more distant from Indianapolis than are Cincinnati, Louisville, and other upper Ohio River crossings via other lines operating to those crossings. In other words, if the carriers operating through the upper crossings are obliged to shrink their earnings north of the river in order to participate in the traffic from Chicago with the Illinois Central and must observe the river rates as maxima, the Illinois Central should likewise shrink its earnings south of the Ohio River if it elects to participate in the traffic from Indianapolis via its preferred gateway, Cairo. The relief prayed respecting rates from the Indianapolis group to Ohio River crossings will therefore be denied.

An appropriate order will be entered in accordance with these conclusions.

It is the general practice of railway companies at New Orleans, including respondent, to switch cars for loading or unloading to and from warehouses on their tracks without extra charge, and to absorb charges of connecting lines for such switching of competitive traffic. Respondent claims that the proposed drayage absorption, from the carrier's standpoint, would not be essentially different from its present switching arrangement, the cost being approximately the same. The testimony as to comparative costs does not justify that conclusion. The greater advantage to the shipper from the dray service would be the saving of loading expense and greater promptness in moving his freight. But it might result in the opportunity to compensate beyond the cost of service which may not be justified. Respondent's tracks do not reach the Bienville warehouse and it is therefore under the necessity of depending upon the Southern Pacific for switching service to and from that warehouse. The delivery of a car empty and its return loaded usually require 24 hours or more.

It is well settled in law that competition between rival railway routes for the same traffic may justify lower rates and charges upon such traffic than upon other traffic otherwise similar. The leading authority, largely relied upon by respondent, is the decision of the United States Supreme Court in *I. C. C. v. A. M. Ry. Co.*, 168 U. S., 144. That case, decided in 1897, primarily concerned the right of railway companies to charge less for a through haul than for a shorter haul over the same route, the through traffic alone being competitive. Although familiar, the more pertinent expressions of the court will, for convenience, be quoted:

As we have shown in the recent case of *Wight v. United States*, 167 U. S., 512, the purpose of the second section is to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor; and we there held that the phrase "under substantially similar circumstances and conditions," as used in the second section, refers to the matter of carriage, and does not include competition between rival routes.

This view is not open to the criticism that different meanings are attributed to the same words when found in different sections of the act; for what we hold is that, as the purposes of the several sections are different, the phrase under consideration must be read, in the second section, as restricted to the case of shippers over the same road, thus leaving no room for the operation of competition, but that in the other sections, which cover the entire tract of interstate and foreign commerce, a meaning must be given to the phrase wide enough to include all the facts that have a legitimate bearing on the situation—among which we find the fact of competition when it affects rates.

Absorption of switching charges of connecting lines on competitive traffic is a general practice of railway companies all over the country. *Curtis Brothers & Co. v. S. P. Co.*, 23 I. C. C., 372. Less common is the rendition of gathering services at origin or of delivering

services at destination of shipments, or the absorption of drayage charges for such purposes. We have had occasion in various reports to note such practices.

While a carrier in recognition of competition may establish different rates between localities and kinds of traffic, it does not follow that the rates so established may be justified by any and all competition, regardless of character or extent. Further quoting from the decision in the *Alabama Midland Case*, *supra*:

In order further to guard against any misapprehension of the scope of our decision it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of "undue or unreasonable preference or advantage," or what are "substantially similar circumstances and conditions." The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration.

In cases brought before it, the Commission is charged with the responsibility of seeing that discrimination in the rates or service of common carriers in recognition of competition is sufficiently justified and is not undue either in kind or extent; and it is apparently the view of the court that the public interest, including that of the carrier, must be made the test. *T. & P. Ry. Co. v. I. C. C.*, 162 U. S., 197; *L. & N. R. R. Co. v. Behlmer*, 175 U. S., 648; *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.*, 31 I. C. C., 311, 318. Whether or not the public interest will be served by the proposed rule now under investigation can not be satisfactorily determined on this record. In the case of switching absorptions the services involved are those of common carriers, and their cost and value are subject to the same tests as are other common-carrier services. It is interesting to note the claim made by the protestants at the hearing that the maximum absorptions proposed by the rule are unnecessarily high, suggesting the possibility of excess payments. Respondent proposes to have the drayage absorptions policed by the Western Railway Weighing & Inspection Bureau, a joint agency of the carriers, but this would not meet the objection here raised.

The proposed rule, although not so drawn, was intended to apply only to carload freight. It also provides for the absorption of drayage charges on shipments to local as well as competitive points. The rule is clearly unjustifiable and must therefore be disapproved.

An order will be entered accordingly.

43 I. C. C.

No. 8967.¹
G. H. EVANS LUMBER COMPANY ET AL.
v.
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted November 9, 1916. Decided April 2, 1917.

Practice of defendants in refusing to issue through export bills of lading on shipments of forest products originating in certain territory, while continuing to issue such bills of lading on export shipments of the same commodities originating in other territory, not shown to be unreasonable or unjustly discriminatory. Complaints dismissed.

O. L. Bunn for complainants.

R. Walton Moore and *Frank W. Gwathmey* for Central of Georgia Railway Company, Atlantic Coast Line Railroad Company, and Southern Railway Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainants are five corporations engaged in the manufacture and sale of lumber and other forest products at Chattanooga, Tenn., or at points in the state of Georgia, their aggregate annual output of lumber being upward of 100,000,000 feet. A considerable portion, perhaps more than one-third of their output, is exported, principally through Gulf or South Atlantic ports. The G. H. Evans Lumber Company, in addition to its manufacture for export, buys lumber extensively at various points in the south from which it is shipped directly to the ports for export. Prior to September 1, 1912, it was the practice of defendants to issue through export bills of lading for all export shipments of forest products, but effective on that date the practice was discontinued, except as to shipments from certain competitive territory, and shippers were thereafter required to ship to the ports on domestic bills of lading and to take out separate bills for the ocean movement. Complainants allege that the issuance of through export bills of lading to shippers of forest products at certain points, and the refusal to issue such bills on the same commodities at competing points, subjects complainants and their traffic to unjust discrimination and to undue prejudice and disadvantage. We are asked to order that these restrictions be

¹ The proceeding also embraces complaint in No. 9028, Georgia Hardwood Association v. Same.

eliminated. They allege also that such refusal of through bills is unreasonable, in violation of section 1 of the act.

The complaint in No. 8967 was filed June 16, 1916, against the Central of Georgia Railway Company, the Southern Railway Company, the Atlantic Coast Line Railroad Company, and the Louisville & Nashville Railroad Company. The last-named defendant was not represented at the hearing, and its practices are not in evidence. The Georgia Hardwood Association on July 3, 1916, filed a similar complaint, No. 9028, against the same defendants. The cases were set for hearing together, but complainant in the latter case offered no evidence.

A shipper to whom an export bill of lading is given may negotiate it immediately at a bank and thereby realize all or a large part of the value of his shipment in cash. He also has ample time before the arrival of the shipment at the foreign port to prepare and forward correct invoices and other documents connected with the sale. If a domestic bill of lading to the port is used, the shipper is unable to realize on his shipment before receiving the ocean bill of lading, the delay being usually from 20 to 30 days. Such shipments, under the carriers' rules, are also subject to demurrage and storage charges at the port. In the case of the exportation of purchased lumber, the delay in realizing on the lumber requires the use of greater capital. These various considerations, it is alleged, give the shipper who uses a through export bill of lading a great advantage over the shipper who must use a domestic bill.

Defendants' practices in the matter of issuing export bills of lading on forest products are not uniform. The Atlantic Coast Line refuses to issue such bills from any point on its line; the Central of Georgia from any point on its line, except Chattanooga and Birmingham; and the Southern from any point in the state of Georgia or from points in other states on or east of its main line from Washington, D. C., to Atlanta, Ga. From other points the last-named defendant issues export bills of lading on forest products within certain specified periods prior to the date of sailing. On other export traffic it is the general practice of defendants to issue export bills from any point not more than 15 days before the sailing of the vessel on which the shipment is to be exported. On one other commodity, cottonseed cake, defendants have recently established a rule requiring that export shipments must move to ports under domestic bills of lading, subject to demurrage charges at the ports after 10 days' free time. It is not contended or shown that other traffic is competitive with forest products.

There can be no doubt of the superior commercial advantages of the export bill of lading. The reasons assigned by defendants for the

exceptional treatment of forest products is inability to secure prompt movement of those commodities through the ports, and the consequent detention of cars or the use of storage space for which the rail carriers are unable to secure compensation. According to the weight of evidence, lumber is considered by the ocean carriers to be relatively undesirable traffic, and it is frequently left in the hands of the rail carriers even in violation of the arrangement for ocean carriage upon which it was forwarded to the port. Evidence regarding the practice prior to September 1, 1912, indicates that the average detention of lumber at ports was then about one month. The Central of Georgia shows that 77 carloads of forest products shipped from various points in Georgia, Tennessee, Alabama, Arkansas, and Illinois to Savannah for export during the period from September 16, 1911, to August 7, 1912, averaged approximately four days in transit to the port and were detained an average of approximately 31 days at the port, counting the time to vessel's sailing. Other defendants give similar evidence. Instances are given in which rail carriers in order to release cars unloaded lumber at the port and subsequently reloaded and switched it to a convenient point for loading into vessels. In other instances cited the accumulated per diem on foreign railway cars thus detained exceeded the rail carrier's freight charges on the shipment. It was a common practice of shippers to make annual contracts with vessels, under which shipments were forwarded to the ports with little reference to particular sailings, especially toward the close of the contract period, when shippers feared an increase in ocean rates. Defendants assert that they have no practical recourse against either the shipper or the ocean carrier for the expense caused by the detention, and this appears to be the view of the principal witness for the complainants.

For these reasons, and to the extent stated, defendants discontinued the issuance of export bills of lading on forest products, and they show that the average detention of those commodities at the ports substantially decreased; in the case of the Atlantic Coast Line to about 15 days. Defendants realized a further advantage in being able to collect demurrage or storage charges after the expiration of 96 hours' free time. The improvement is attributed to greater care on the part of the shippers in timing the arrival of their shipments at the ports. The extent to which complainants have been required to pay demurrage or storage charges at ports is not shown.

The Central of Georgia, in justification of its exceptional practice at Chattanooga and Birmingham, states that shippers at those points are able to ship over lines of railway which issue export bills of lading through the Gulf ports or Norfolk and contends that refraining from meeting this competition at those points would have no re-

sult but to deprive it of traffic to the advantage of rival routes. The Southern similarly justifies its exceptional practice. Export bills of lading on forest products are issued by that defendant from stations between Chattanooga and Bristol, Tenn., and on the Virginia & Southwestern Railway, now known as the Appalachian division, not more than 40 days prior to advice of the vessel's sailing, this period being adopted in recognition of the competition of the Norfolk & Western Railway in the same territory of origin. From stations in Alabama east of Decatur, Birmingham, and Calera the period is 15 days and from stations farther west 30 days, these variations being due to varying practices of other lines. The limitation of the period in which an export bill of lading will be issued prior to the sailing of the vessel is intended to avoid in some degree detention of cars or freight at the port, but the restriction frequently fails to accomplish its purpose. The ocean service is usually irregular, the lumber being largely exported in "tramp" vessels, for which reason it is impracticable accurately to foretell sailings. Complainants do not object to the 30-day restriction.

The conservation of the use of equipment and other facilities of rail carriers is clearly in the public interest, and is especially important at this time. Defendants assert that they have no other practicable means of relieving their facilities. The ocean carriers disclaim any responsibility for demurrage and storage charges of the rail lines, although it appears that such charges accrued under domestic billing are advanced by the ocean carriers and collected at the foreign destinations.

It appears that arrangements for the exportation of lumber are usually made through ships' agents, but there is nothing in this record to indicate that such agents either could or should be held responsible for demurrage or storage charges on lumber or other forest products. Defendants express the opinion that the collection of demurrage or storage charges on export shipments in transit is impracticable in the absence of a provision in the export bill of lading giving the carrier that power. Such a provision is proposed and is now before the Commission for consideration in Docket No. 4844, *In the Matter of Bills of Lading*.

The Commission has no power to require the issuance of through bills of lading to foreign destinations, but may require the discontinuance of practices which create unjust discriminations or undue preferences. *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 23 I. C. C., 417; *Aransas Pass Channel & Dock Co. v. G., H. & S. A. Ry. Co.*, 27 I. C. C., 403. There is no evidence that defendants' practices respecting the issuance of export bills of lading unjustly discriminate against complainants, in violation of section 2 of the act.

Complainants' traffic does not move from the same points of origin as that of competing shippers in whose favor unjust discrimination is alleged, and therefore the provisions of section 2 are inapplicable. *Interstate Commerce Commission v. Alabama Midland Ry. Co.*, 168 U. S., 144. It is also well settled that compelling competition may justify carriers in varying their rates and practices at different points. *I. C. C. v. Diffenbaugh*, 222 U. S., 42.

We find that the practices of defendants here in issue have not been shown to be unreasonable, unjustly discriminatory, or unduly prejudicial, and an order will be entered dismissing the complaints. What is said herein is without prejudice to any conclusions that may be announced in *In the Matter of Bills of Lading, supra*.

The adequacy of the free time allowed on export shipments of forest products moving to the ports on domestic bills of lading is not discussed in the record.

An order will be entered dismissing the complaints.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 880.
WESTERN TRUNK LINE RATE INCREASES.

Submitted February 9, 1917. Decided April 3, 1917.

1. Proposed increased minimum weight on acids in tank cars to shell capacity of tank justified.
2. Proposed cancellation of commodity rates on agricultural implements in carloads justified.
3. Proposed cancellation of proportional rates on asphalt and asphaltum to Missouri River cities and related points justified; proposed increased local rates to Missouri River cities and proposed increased local and proportional rates to interior Iowa cities not justified.
4. Proposed cancellation of commodity rates on burlap press cloth, any quantity, justified.
5. Proposed increased rates on building and roofing material in carloads not justified.
6. Proposed increased rates on chip board in carloads not justified.
7. Proposed cancellation of certain commodity rates on candy, any quantity, justified.
8. Proposed increased carload minima on cooperage and proposed elimination of two for one rule not justified.
9. Proposed cancellation of certain commodity rates on grapes in carloads justified.
10. Proposed change in description of heating apparatus taking commodity rates justified.
11. Proposed increased rates on hollow building blocks and hollow building tile in carloads justified.
12. Proposed increased rates on soda and soda products in carloads justified.
13. Proposed increased rates on stone in carloads justified.
14. Proposed cancellation of commodity rates on toilet paper, in straight carloads, justified; proposed cancellation of such rates on toilet paper, in mixed carload shipments with unprinted papers, not justified.
15. Proposed redescription of wrapping paper in carloads and increased commodity rates resulting therefrom justified.

O. C. Wright, R. H. Widdicombe, S. H. Strawn, F. S. Hollands, O. W. Dynes, J. B. Payne, W. F. Dickinson, R. G. Brown, F. G. Wright, H. G. Herbel, Robert N. Nash, Thomas Bond, N. S. Brown, A. P. Humburg, R. B. Scott, W. H. Bremner, J. B. Sheean, T. J. Norton, and F. E. Andrews for respondents.

O. E. Childe, E. J. McVann, W. P. Trickett, S. J. Bolton, J. H. Tedrow, C. S. Bather, J. H. Henderson, Dwight N. Lewis, Arthur B. Hayes, Chas. Conradis, Frank A. Larish, C. D. Dooley, Luther M. Walter, John S. Burchmore, Nuel D. Belnap, C. R. Hillyer, Cecil J. Baxter, O. Van Brunt, B. W. Edwards, and J. G. Brice for protestants.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

Proposed increased rates and other changes respecting various commodities moving between points in western trunk line territory are under consideration in this proceeding. The proposed rates and other changes were published to become effective in July, August, and October, 1916, but on protests of numerous interested shippers, commercial organizations, and state commissions they were suspended until April 29 and July 29, 1917. The proposed changes on all the commodities involved except dairy products are considered in this report. The proposed increased rates on dairy products are considered in a separate report.

While the proposed changes cover a wide territory and increase the rates on many different commodities, the respondent carriers offer no general reason or justification, such as the need of additional revenue, in support of the changes as a whole. They rely on evidence of special circumstances and conditions surrounding each commodity or group of commodities. We therefore pass to a consideration of the justification submitted in respect to the increased rates on each commodity: All rates are stated in cents per 100 pounds.

ACIDS.

The present carload minima on acids in tank cars between Chicago, Mississippi River cities, and related points, on the one hand, and interior Iowa and Missouri cities, on the other, are: 40,000 pounds on muriatic acid and 50,000 pounds on mixed acid and sulphuric acid. It is proposed to change these minima to the shell capacity of the tank at actual weight but not less than the present minima. It is stated that the proposed change conforms to the usual basis of tank-car minima in this territory. It may be observed, however, that if the present minima can not be loaded in certain tank cars, they are unreasonable; but if they can be loaded in all tank cars, the proposed exception, "but not less than the present minima," is unnecessary. We find that the proposed minima, without the exception referred to, has been justified.

AGRICULTURAL IMPLEMENTS.

On agricultural implements in carloads it is proposed to cancel the present commodity rates from St. Paul, Minneapolis, and related points to Missouri River cities and points east and west thereof, leaving the class A rates to apply. In *1915 Western Rate Advance Case—Part II*, 37 I. C. C., 114, we found that the cancellation of the commodity rates on agricultural implements from Chicago, Peoria, Mis-

Mississippi River cities, and points basing thereon to the same destinations and the application in lieu thereof of the class A rates had been justified. The following table shows the present and proposed rates from Minneapolis, as representative of the points of origin involved herein, and the present rates from Chicago, as representative of the points of origin involved in the case above cited, to Kansas City and Omaha, typical destinations:

To—	From Minneapolis			From Chicago.	
	Average miles.	Present rates.	Proposed rates	Average miles.	Present rates
Kansas City	574	28	34	500	32
Omaha	426	28	32	500	32

The agricultural implements which Minneapolis ships to Missouri River cities and points beyond are manufactured largely in Minneapolis. Minneapolis and Chicago manufacturers compete with each other in the sale and distribution of their products in the destination territory in question. Respondents state that the Chicago manufacturers have complained of the present adjustment whereby they pay class A rates while their Minneapolis competitors are granted commodity rates less than that basis. The general circumstances and conditions surrounding the movement of agricultural implements from Minneapolis are substantially similar to those surrounding the movement from Chicago. Respondents, therefore, contend that, as we permitted the class A basis to become effective from Chicago, we should permit the same basis to become effective from Minneapolis.

The Minneapolis shippers oppose the application of the class A rates on two general grounds: (1) That commodity rates less than class A are carried from certain other manufacturing centers; and (2) that the present adjustment of class A rates from Minneapolis and Chicago is not fair to Minneapolis.

The record shows that commodity rates are maintained from Rockford, Ill., to Sioux City, Iowa, and Sioux Falls, S. Dak., from Ottumwa, Iowa, to Omaha and Kansas City; from St. Louis to Kansas City, applicable only on intrastate traffic; from certain points in Illinois and Wisconsin which ordinarily take Chicago rates to Missouri River cities, but by special applications are given Peoria rates on agricultural implements; and from certain other points in Illinois and Wisconsin to Sioux City and Sioux Falls. It was not specifically shown that Minneapolis competes with any of the points referred to. The fact that commodity rates less than class A basis

were continued between certain points was also pointed out in the *1915 Western Rate Advance Case, supra*, but we decided that the effort of the respondents therein to bring all the rates on agricultural implements to the class A basis should not for that reason be condemned.

The Chicago-Omaha basis of class rates applies from Minneapolis to Omaha, but the Chicago-Kansas City basis is lower than that from Minneapolis to Kansas City. It also appears that the class rates from Minneapolis do not grade up as gradually as the class rates from Chicago to points in Iowa and Missouri intermediate to the Missouri River cities. A similar question was raised in the case above cited, but we stated that the approval of the class A basis on agricultural implements did not carry with it any approval of the reasonableness or relationship of particular class A rates. If the Minneapolis protestants consider the present adjustment of class A rates from Minneapolis and Chicago to the territory in question unjust to them, they may bring the matter to our attention by formal complaint.

In view of our decision on this question in the *1915 Western Rate Advance Case, supra*, and of all the facts of record, we conclude that the class A basis on agricultural implements has been justified.

ASPHALT AND ASPHALTUM.

The commodities included under this general head are asphalt, asphaltum (including petroleum asphaltum), petroleum road oil, and petroleum wax tailings. Asphalt and asphaltum are shipped in box cars, minimum weight 50,000 pounds. Petroleum asphaltum, road oil, and wax tailings are shipped in box cars at the same minimum weight, and also in tank cars at the gallonage capacity of the tank. Solid asphalt and asphaltum are produced in the island of Trinidad and the republic of Venezuela; that from Trinidad being imported into this country through, and refined at, Newport News, Va., and at certain Gulf ports; that from Venezuela through Atlantic ports and refined at Maurer, N. J. The value of this imported asphalt ranges from \$17.50 to \$25 per ton. Petroleum asphaltum, road oil, and wax tailings are made from petroleum residuum, and we found in *Mid-continent Oil Rates*, 36 I. C. C., 109, 127, that they sold at 1 to 2½ cents per gallon at the refineries.

It is proposed to increase the rates on these commodities from Chicago, Mississippi River crossings, and related points to Missouri River cities and points basing thereon, and to interior Iowa cities. The increases proposed to Kansas City, a typical Missouri River city, and to Des Moines, a typical interior Iowa city, are as follows:

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To—	Mississippi River crossings.		Chicago.	
	Present rates.	Proposed rates.	Present rates.	Proposed rates.
Kansas City:				
Local.....	10	12	12½	17
Proportional.....	7½	12	11½	17
Des Moines:				
Local.....	10	10½	10	12½
Proportional.....	7½	10	.....	.....

The proportional rates shown apply on traffic originating east of the western termini of eastern trunk lines and at Gulf ports, and, as a practical matter, apply only on the imported asphalt. It is proposed to cancel these proportional rates and, generally speaking, to increase the local rates.

The rates to interior Iowa cities are in rather a chaotic condition and, with the rates on certain other commodities, are the subject of an application for a more specific order in *Des Moines Commodity Rates*, 34 I. C. C., 281, 36 I. C. C., 538, and of a new complaint in *State of Iowa v. B. & O. R. R. Co.*, Docket No. 9074, now pending. The only witness who testified on behalf of respondents in respect to the rates on asphalt and asphaltum was not familiar with the Iowa adjustment, and the record therefore contains no evidence in support of the proposed increased rates to Iowa cities.

The rate from Mississippi River crossings to Missouri River cities, which may be considered as typical of the rates from and to related points, has fluctuated considerably in the last 12 years. Prior to October 18, 1905, this rate was 5 cents, and was applied both as a local rate and a proportional rate. On that date it was increased to 7½ cents, and on June 12, 1906, to 10 cents. On February 4, 1907, a separate proportional rate of 5 cents was established on asphalt in solid form, minimum weight 40,000 pounds, the local rate of 10 cents being continued in effect on asphalt and asphaltum, minimum weight 30,000 pounds. On January 18, 1909, the proportional rate was increased to 7½ cents. Respondents contend that this proportional rate has caused them “more or less embarrassment” and that there is no valid reason why it should be continued.

The import rate from Newport News to Mississippi River crossings is 14 cents, which, added to the proportional rate of 7½ cents from the Mississippi River crossings to Missouri River cities, makes a through rate of 21½ cents. The rate from Gulf ports to Kansas City is 20 cents, or 1½ cents less than the combination through rate from Newport News. It was testified that the “recognized” differential Gulf ports under Newport News is 6 cents, but a check of our tariff files fails to show that any such differential has existed on these commodities in recent years.

In support of the proposed local rate of 12 cents from the Mississippi River crossings to the Missouri River cities, respondents point to the eastbound rate of 12 cents between the same points. The latter rate was established February 28, 1916, or on the same date that the rate of 15 cents from Kansas and Oklahoma petroleum-producing points to St. Louis, prescribed by us in *Midcontinent Oil Rates, supra*, was put into effect. No weight can be given to this comparison as there does not appear to be any eastbound rail movement of the commodities in question from Missouri River cities.

Respondents also presented comparisons with the rates on other commodities, but these comparisons were not supported by any evidence showing a substantial similarity of conditions surrounding their movement.

We find and conclude that the proposed cancellation of the proportional rates to Missouri River cities and points basing thereon has been justified, but that the proposed increased local rates thereto and the proposed increased local and proportional rates to interior Iowa cities have not been justified.

BURLAP PRESS CLOTH.

On burlap press cloth it is proposed to cancel the commodity rates from Chicago, Mississippi River points and related points to Missouri River cities and points east and west thereof, leaving the first-class rates to apply. The present commodity rates from Chicago and Mississippi River points to Missouri River cities are 50 cents and 35 cents, respectively; the first-class rates, 80 cents and 60 cents, respectively.

Burlap press cloth is used in paper mills for separating the pulp, in packing houses for pressing oil or grease from refuse, and in cider mills and other mills for straining purposes. It is somewhat coarser and heavier than burlap bagging and is cut to certain lengths to fit the presses. The present commodity rates are any-quantity rates, but as the article always moves in small quantities of from 2,000 to 5,000 pounds, the rates are practically less carload commodity rates.

When the present rates were established, the carriers understood that burlap press cloth was shipped in the piece like cotton piece goods, and consequently the rates applicable on cotton piece goods were published to apply on burlap press cloth. In recent years cotton press cloth has begun to take the place of burlap press cloth. In October, 1914, the carriers were asked to establish on cotton press cloth the same any-quantity commodity rates as applied on burlap press cloth. It was then that the carriers discovered that burlap press cloth is not shipped in the piece, but cut to certain lengths. They accordingly decided to cancel the application thereon of the same rates as applied on cotton piece goods.

No protestants were represented at the hearing. We find that the proposed cancellation of the present commodity rates has been justified.

BUILDING AND ROOFING MATERIAL.

It is proposed to revise the list and description of articles comprehended under the head of building and roofing material, and to increase the present commodity rates thereon between Chicago, Mississippi River cities, and related points on the one hand, and St. Paul-Minneapolis, Missouri River cities, and related points on the other, and also between St. Paul-Minneapolis and related points, and interior Iowa cities. With certain exceptions, which need not be detailed, the building and roofing materials considered herein include building and roofing paper and felt, prepared roofing, asphalt shingles, roof coating, chip board, and strawboard in straight or mixed carloads. The most important change proposed in the description of the mixture is the addition of wall board and the elimination of chip board and strawboard. The extent of the increases in rates proposed is illustrated by the following table:

	Chicago.		St. Louis.		St. Paul-Minneapolis.	
	Present rates.	Proposed rates.	Present rates.	Proposed rates.	Present rates.	Proposed rates.
Kansas City.....	16	18½	11	13½	16	18½
Omaha.....						
St. Paul.....	10	13½	10½	14	.....	.....
Minneapolis.....						
Des Moines.....	12½	12½	10½	10½	10	13½

Wall board is now included in a separate mixture with other composition paper boards at the same commodity rates, generally speaking, as are proposed herein on building and roofing materials. In the establishment of new mixtures, or the widening of existing mixtures, respondents state that the general rule is to apply on the entire mixture the highest rate and minimum weight applicable on any article in the mixture. They contend that wall board is not related to other paper boards from a commercial standpoint; that it is a building material; and that the manufacturers thereof insist that it be included in the building and roofing material mixture. On cross-examination respondents' witness could name only two concerns that had requested the new mixture. One of these concerns was represented at the hearing by its traffic manager and railway sales agent, who testified that the proposed mixture was desired in order to build up the wall board business. On the other hand, representatives of all the manufacturers of wall board west of Pittsburgh, Pa., and Buffalo, N. Y., stated that they had not asked for the mixture. The

representative of the largest mill in the country testified that it was a matter of indifference to them whether wall board was included in the mixture or not. The record shows that the output of wall board as compared to other composition boards and to other roofing and building materials is very small. Protestants take the position that it would be unjust to increase the rates on all the other materials in order that small quantities of wall board might be shipped at car-load commodity rates, particularly as respondents do not intend to continue the present commodity rates on the present mixture.

Protestants also point out that the present rates on wall board, which, between Chicago and Missouri River cities, for example, are the same as those proposed herein on building and roofing materials, permit the mixing of roofing and roof coating with wall board. Traffic officials of respondents have interpreted "roofing" to include every kind of roofing. In other words, the mixture which respondents claim certain manufacturers have been desirous of securing is already in effect, and on the same basis of rates as that proposed herein. Notwithstanding this fact, not one of 139 cars of roofing materials, comprising the total shipments of one large manufacturer from Chicago to Kansas City during the year ended May 31, 1916, contained a pound of wall board. Moreover, 90 per cent of all the cars shipped into western trunk line territory by that concern contained roofing materials and so-called fixtures, the "fixtures" being made up chiefly of pitch and tar. These pitch and tar fixtures comprise about 50 per cent of the average mixed carload shipment. The present rate on pitch and tar, in straight carloads, between Chicago and Missouri River cities is 11 cents, or 5 cents less than that on the roofing mixture. It is contended, therefore, that the possibility of a small amount of wall board, which now takes a rate of 18½ cents between the same points, being included in a few cars with roofing materials, is no good reason why the rates on all cars shipped, which always contain low-rated "fixtures," should be increased to the wall board basis.

In support of the reasonableness of the proposed increased rates, respondents submit numerous and elaborate exhibits comparing the ton-mile and car-mile earnings therefrom with those from rates on other commodities moving between the same points and also between other and equidistant points. No weight can be given to such comparisons unless supported by evidence showing a substantial similarity of surrounding conditions. Respondents' showing of such conditions was meager, although their attention was called to the matter at the hearing. One of their witnesses compared the actual car loadings of building and roofing materials shipped by certain manufacturers with estimated car loadings of certain other commodities.

Another showed the aggregate movement of building and roofing materials as compared with other commodities between all points on a single transcontinental railroad. The record is barren of evidence of comparative values, average hauls, competitive conditions, and other factors and influences surrounding the commodities which they compare with building and roofing materials.

Numerous exhibits were also presented comparing the proposed commodity rates with the fifth-class rates, and also the percentage relation which the proposed commodity rates bear to the fifth-class rates with that which the commodity rates on other commodities bear to the corresponding class rates. While building and roofing paper are classified fifth class in the western classification, some of the other articles included in the mixture are classified lower. Pitch and tar, which, as before stated, comprise a substantial portion of the average mixed carload shipment, are classified class D. The present commodity rate on building and roofing materials between Chicago and Missouri River cities is 60 per cent of the fifth-class rate, whereas the commodity rates on various other articles selected by respondents range from 74 to 100 per cent of the corresponding class rates. On the other hand, the commodity rates between the same points on certain articles selected by one of the protestants range from 35 to 73 per cent of the corresponding class rates. These two showings demonstrate that there is no fixed relation which may be denominated a proper relation between commodity rates and corresponding class rates. A showing that the commodity rate on a particular article is a less proportion of the corresponding class rate than that on certain other articles is no more justification for an increase in the commodity rate on that particular article than a showing that the commodity rate on another article is a greater proportion of the corresponding class rate is a justification for reducing the commodity rate on that article. When a commodity rate is established it is presumed to be the result of special circumstances and conditions surrounding the movement of the particular article between particular points—circumstances and conditions that do not inhere in or apply to the movement of the same articles or other articles between all points. The contention that a commodity rate should bear a fixed, different, or any relation whatever to the corresponding class rate overlooks the fact that the article on which the commodity rate applies has been removed from the classification and from its association with or relation to other articles, so far as the movement between certain points is concerned.

Respondents also contend that the present rates are subnormal. Taking again the rate from Chicago to the Missouri River cities, for illustration, the record shows that immediately prior to July 10, 1907,

that rate was 13 cents. On that date it was increased to 15 cents and on January 26, 1909, to 16 cents, the present rate. An increase to 18½ cents was proposed in June, 1910, but this proposed increased rate, along with proposed increased rates on numerous other commodities, was held not justified in *Advance in Rates—Western Case*, 20 I. C. C., 307. This history of the rates does not bear out the contention that the present rates are subnormal.

It will be noticed from the table shown on page 487 that no increase is proposed in the rate from Chicago to Des Moines. In *Des Moines Commodity Rates*, 36 I. C. C., 538, we prescribed a rate of 12½ cents on these articles from Chicago to Des Moines. That rate was fixed in relation to the then existing rate of 16 cents, which is also the present rate, from Chicago to Missouri River cities. The record in this case shows that Des Moines competes with Missouri River cities in the distribution of roofing and building material and other commodities, and this fact was considered in fixing the rate relation referred to. After the tariffs publishing the proposed increased rates to Missouri River cities were filed, respondents applied to us for permission to make corresponding increases in the rates to Des Moines, but as our order in the above case had not expired, and will not expire until January 31, 1918, the application was denied. The Missouri River protestants contend that if the proposed increased rates to the Missouri River cities are permitted to become effective at this time, the relation of rates fixed after an exhaustive investigation in the above case will be disturbed, thereby subjecting them to undue prejudice in favor of their Des Moines competitors.

Protestants present numerous and elaborate exhibits intended to show that the present rates on building and roofing materials are just and reasonable. Many of these exhibits are subject to the same criticism as the exhibits of respondents, viz, comparisons of the rates under review herein with those on other commodities between the same and other and equidistant points are not supported with evidence showing a substantial similarity of surrounding circumstances and conditions. In view of the conclusion which we have reached on respondents' showing a further discussion of protestants' case is unnecessary.

On the record before us we find and conclude that the proposed increased rates on building and roofing materials have not been justified.

COMPOSITION PAPER BOARDS.

As hereinbefore stated, chip board and wall board may be shipped in straight or mixed carloads with some building or roofing materials at the commodity rates applicable on the latter between Chicago, Mississippi River cities, and related points on the one hand, and St.

Paul-Minneapolis, Missouri River cities, and related points on the other. These two composition boards may also be shipped in straight or mixed carloads with certain other composition boards between the same points at commodity rates which are higher than those applicable on building and roofing materials. In other words, the tariffs contain two sets of commodity rates, one higher than the other, applicable on chip board and strawboard, in straight carloads.

It is proposed to eliminate chip board and strawboard from the building and roofing material description; to establish separate commodity rates on strawboard, in straight carloads, on basis of the present commodity rates applicable on building and roofing materials; and to provide that the present commodity rates on composition boards, including strawboard, shall apply on the latter in mixed carloads only. The resulting increases in rates on chip board would be the same as those proposed on building and roofing materials, shown in the table appearing on page 487.

The record indicates that the proposed rearrangement of mixtures and readjustment of rates on the composition boards referred to is merely a detail of the changes proposed on building and roofing materials. The testimony shows that from a transportation standpoint there is no inherent difference in the several kinds of paper board and felt board now specified in the tariffs. One large manufacturer testified that strawboard, which is made of straw and scrap paper, is really chip board, and that if the rates on chip board were increased the same article could be billed as strawboard. Another witness stated that wall board is nothing but three or four ply chip board. At a recent conference of manufacturers and representatives of lines operating in central freight association territory it was agreed that the different kinds of composition board might very properly be called paper board. The value of the different boards is about the same, and the circumstances and conditions surrounding their transportation are said to be exactly the same. In view of these facts there would appear to be no justification for applying differing commodity rates on composition paper boards, which, although differently named, are really the same product.

We find that the proposed increased rates on chip board have not been justified.

CANDY.

The only rates on candy under review in this proceeding are the commodity rates of 40 cents and 42 cents from Kansas City and Omaha, respectively, to Memphis, Tenn. It is proposed to cancel these rates, which are any-quantity rates, and apply in lieu thereof the western classification basis. This would result in rates of 65 cents and 67 cents, respectively, on less-than-carload shipments and of

45 cents and 47 cents, respectively, on carload shipments. Respondents were unable to give the origin of these rates, but they claim that it was only through oversight that the rates were not canceled years ago.

As a general rule the rates from Kansas City to Memphis are the same as those from Kansas City to Chicago, but the rates in question are considerably lower than those from Kansas City to Chicago. The rates from St. Louis to Memphis are 45 cents, less carloads, and 30 cents, carloads, as against 40 cents any quantity from Kansas City to Memphis. The short-line distance from St. Louis to Memphis is 305 miles; from Kansas City to Memphis, 484 miles.

We find that the proposed cancellation of the commodity rates in question has been justified.

COOPERAGE.

On cooperage, which includes barrels, well buckets, casks, drums, kegs, and tierces, respondents propose to increase the carload minima from Chicago, Peoria, Mississippi River crossings, and related points to Missouri River cities and related points, and from and to miscellaneous points in Iowa and Missouri, and also to cancel the application of the so-called two for one rule. The present minima, those proposed in the suspended schedules, and a compromise basis offered by respondents at the hearing are shown in the following table, in pounds:

Length of cars.	Present minima.	Proposed minima.	Compromise basis.
26 feet and under.....	14,000 to 12,740	14,000	14,000
40 feet 6 inches and over 26 feet.....	15,000 to 14,420	15,000	15,000
Except cars 40 feet in length and 9 feet in height.....	15,000	21,000	20,000
45 feet and over 40 feet 6 inches.....	17,730 to 16,100	25,200	20,000
50 feet and over 45 feet.....	19,820 to 17,730	25,200	24,000

The present rates on cooperage between the points referred to are on the class D basis. For some time respondents have been dissatisfied with the earnings on this traffic, and have considered making an increase in the rates. Certain manufacturers of heavy "slack" barrels became aware of the carriers' intention and suggested that the earnings be increased by an increase in the carload minima. This suggestion was adopted and the suspended schedules were the result. Subsequently certain manufacturers of "tight" barrels, who had protested against the proposed minima, conferred with respondents, and the compromise basis shown in the above table was agreed upon. At the hearing, however, numerous manufacturers and shippers, who had not been advised of and did not participate in the conference referred to, vigorously protested against both the compromise basis and the basis proposed in the suspended schedules. The only wit-

ness who appeared for respondents testified that the object of the increased minima was to secure an increase in the carload earnings. This witness did not know whether the proposed minima could be loaded, but admitted that if they could not be loaded they should not be approved.

Five large manufacturers and shippers of both slack and tight cooperage, including one who had agreed to the compromise basis above referred to, testified and demonstrated by exhibits of average car loadings for varying periods that neither the minima proposed in the suspended schedules nor those contemplated by the compromise basis can be loaded. In fact, the experience of these manufacturers and shippers is that the present minima for the average run of box cars up to 50 feet in length can not be loaded. The record indicates, too, that the cars are loaded to their full visible capacity. The consensus of opinion of the protestants represented at the hearing is that the carload earnings on this traffic, if too low, should be increased by increases in the rates rather than in the minima.

If a shipper orders a large car and the carrier is unable to furnish it, the so-called two for one rule requires that two smaller cars shall be furnished and the minimum weight applicable to the size of the car ordered applied. In *Furnishing Cars at Carrier's Convenience*, 42 I. C. C., 379, 381, we stated that such a rule is a desirable one and should be abrogated only for exceptional reasons. The respondents herein desire to cancel the application of the rule on cooperage because, as their one witness testified, it is being abused. This witness expressed the opinion that shippers ordered large cars when they knew that large cars were not available, and that the real purpose of such orders was to secure two smaller cars under the two for one rule. On the other hand, the record shows that the shippers load the cars to their full visible capacity and that large cars are ordered only when actually needed. As it is impossible to load the prescribed minima in the smaller cars, it is not surprising that some large cars are ordered. What respondents' witness characterizes as an abuse of the rule is really a proper and legitimate use of that rule, governed by tariff provisions. The so-called abuse could be curtailed if proper minima for the small cars were established.

We find and conclude that the proposed increased minima and the proposed cancellation of the two for one rule on cooperage have not been justified.

GRAPES.

Respondents publish commodity rates on grapes, carloads, minimum weight 24,000 pounds, between Chicago, Peoria, and other distributing centers on the one hand, and points in Iowa, Minnesota,

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Wisconsin, and the upper peninsula of Michigan on the other. It is proposed to cancel these commodity rates, leaving the western classification basis of third class, minimum weight 20,000 pounds, to apply. Grapes move exclusively in refrigerator cars, which must be iced to protect the shipments in transit.

In *State of Iowa v. C., St. P., M. & O. Ry. Co.*, 28 I. C. C., 76; 29 I. C. C., 539, and related cases, we reduced the class rates from Chicago to the interior Iowa cities. To many points, such as Des Moines and Fort Dodge, the class rates were made lower than the commodity rates on grapes, so the carriers canceled the commodity rates. As a result of this readjustment many destinations are without commodity rates from any distributing center, others have commodity rates from some centers and the third-class basis from other centers, while still other destinations have commodity rates from all distributing points. Subsequently the carriers made a recheck of the remaining commodity rates on grapes in western trunk line territory and found them in a very chaotic condition. After considering the situation as a whole it was decided to cancel such commodity rates. The application of the third-class rates would result in increases ranging from one-half cent to 11½ cents, reductions as great as 3½ cents, and in some instances no change whatever.

The present and proposed rates between representative points are as follows:

From—	To—	Present rates.	Proposed rates.
Chicago, Ill.....	St. Paul, Minn.....	22½	40
Do.....	Duluth, Minn.....	22½	44
Do.....	La Crosse, Wis.....	22½	38
Do.....	Marshalltown, Iowa.....	24	36
Do.....	Mason City, Iowa.....	24	40
St. Louis, Mo.....	St. Paul, Minn.....	42	42
Do.....	Winona, Minn.....	40	40
Dubuque, Iowa.....	Oshkosh, Wis.....	22½	30
Peoria, Ill.....	Cedar Rapids, Iowa.....	27½	28
Do.....	Faribault, Minn.....	22½	40

In justification of their proposed action, respondents point out that grapes are the only fresh fruit moving in western trunk line territory on which commodity rates lower than the classification basis are maintained. They state that shippers of grapes have importuned them to extend the commodity rates on grapes, and that shippers of other fresh fruits were using the existence of the present commodity rates on grapes as a basis for demanding commodity rates on their shipments. Grapes are classified second class in the official classification. Exhibits submitted by respondents show that the third-class rates between points in western trunk line territory compare favorably with the second-class rates from shipping points in Michigan to points in central freight association and eastern trunk line territories.

The state of Iowa through its commerce counsel protested against the proposed cancellation of the remaining commodity rates to and from points in that state. In support of the reasonableness of the present rates exhibits were presented making comparisons with the commodity rates on fresh meat, but the influences affecting the rates and the general circumstances and conditions surrounding the movement of fresh meat are so dissimilar from those in respect to grapes that no weight can be given to such a comparison. The only shipper who appeared at the hearing stated that the minimum weight of 24,000 pounds required in connection with the commodity rates could not easily be loaded, but that he preferred the commodity rates with that minimum weight to the third-class rates with the minimum weight of 20,000 pounds.

On the whole record we find and conclude that respondents have justified the proposed cancellation of the commodity rates on grapes.

HEATING APPARATUS.

The only change proposed on heating apparatus is a redescription of the articles taking the commodity rates from Chicago, Mississippi River crossings, and other points to points in Iowa, Minnesota, Missouri, etc. It is not clear from the present description just what the term heating apparatus includes. The proposed description removes this uncertainty by referring to the heating apparatus classified fifth class in the western classification. It is also proposed that shipments of iron and steel pipe, fittings, connections, and couplings, in mixed carloads with heating apparatus, shall be subject to rule 21-B of the western classification. Under this rule the weight of the pipe fittings, connections, and couplings would be limited to 33½ per cent of the total weight of the shipment. No protestant appeared in opposition to these changes, and we find that they have been justified.

HOLLOW BUILDING BLOCKS AND HOLLOW BUILDING TILE.

Prior to September 1, 1915, a rate of 8 cents on hollow building blocks and hollow building tile, carloads, was in effect from Fort Dodge, Iowa, to Chicago group points, which includes points in northern Illinois and practically the whole of Wisconsin. On that date that rate was increased to 10 cents to points in Wisconsin north of the main line of the Chicago, Milwaukee & St. Paul Railway from Prairie du Chien to Milwaukee, except points on the Green Bay & Western, Kewaunee, Green Bay & Western, and Ahnapee & Western railways. The failure to increase the rate to points on the latter lines was due to an error in publishing the tariff. In this proceeding it is proposed to correct that error.

Grand Rapids, Mich., Green Bay and Sturgeon Bay, Wis., are representative destinations affected by the proposed rates. The ton-

mile earnings under the present and proposed rates to these points are shown in the following table:

From Fort Dodge to—	Miles.	Present rates.	Proposed rates.	Ton-mile earnings.	
				Present.	Proposed.
		Cents.	Cents.	Mills.	Mills.
Grand Rapids.....	311	8	10	5.14	6.43
Green Bay.....	407	8	10	3.93	4.91
Sturgeon Bay.....	464	8	10	3.45	4.31

The rate on hollow building blocks from Mason City, Iowa, to the entire Chicago group is 8 cents, but Mason City is served by the Chicago, Milwaukee & St. Paul Railway, which gridirons the state of Wisconsin. Mason City is also 72 miles nearer than Fort Dodge to the particular destinations above referred to. The general adjustment of rates on other commodities between Fort Dodge and Mason City on the one hand, and points in the Chicago group on the other, contemplates higher rates to and from Fort Dodge than to and from Mason City.

No protestants appeared at the hearing in opposition to the proposed rates, and we find on the record before us that they have been justified.

SODA AND SODA PRODUCTS.

The articles included under this general head are silicate of soda, caustic soda, calcium chloride, sal soda, soda ash (except washing, scouring, and cleaning compounds), monohydrate of soda and sesquicarbonate of soda. The first three articles named are sometimes shipped in tank cars, minimum weight 60,000 pounds, while all the articles are shipped in box cars, minimum weight 50,000 pounds. It is proposed to increase all the rates on these articles, in carloads, except in tank cars from Missouri River cities eastbound, between Chicago, Mississippi River cities, St. Paul-Minneapolis and related points, and Missouri River cities and points east and west thereof. The following table presents a comparison of the rates on silicate of soda from and to representative points:

	Miles.	Present rates.	Proposed rates.
From Chicago to—			
St. Paul.....	306	17	17
Kansas City.....	451	15	17
Omaha.....	483	15	17
From St. Louis to—			
St. Paul.....	553	18	18
Kansas City.....	274	10	12
Omaha.....	412	10	12
From Kansas City to St. Paul.....	490	16	18
From Omaha to St. Paul.....	346	15	17

While no increases are proposed from Chicago and St. Louis to St. Paul, an increase of 2 cents is proposed in all the other rates shown in the above table. The rates from Chicago to St. Paul on other commodities are generally lower than those from Chicago to Missouri River cities, whereas the proposed rates from Chicago to Missouri River cities on all soda products except sal soda are the same or lower than those from Chicago to St. Paul. In other words, the proposed increased rates will bring the general adjustment of rates on soda products more nearly in line with that on other commodities.

The commodity rates on silicate of soda, caustic soda, and calcium chloride (liquid) in tank cars, between Chicago and St. Louis and the Missouri River cities formerly applied westbound only, but since September 1, 1915, they have been applied eastbound also. The westbound rates on which the great volume of the traffic moves have fluctuated considerably in the last 10 years. Taking the rates on silicate of soda, in barrels, casks, drums, or pails, for illustration, the fluctuation has been as follows:

Effective date.	Rates to Missouri River cities from—		Effective date.	Rates to Missouri River cities from—	
	Chicago.	St. Louis.		Chicago.	St. Louis.
September 5, 1906.....	17½	12½	January 15, 1909.....	17	12
July 24, 1906.....	15	10	March 15, 1910.....	15	10
May 21, 1908.....	15	10	July 1, 1910.....	17	12

¹ Minimum weight increased from 40,000 pounds to 60,000 pounds. ² Under suspension herein.

There are commodity rates between the same points on other kinds of soda products. On Glauber's salt, which is sulphate of soda, and on salt cake, which is very crude sulphate of soda, the rates from Chicago and St. Louis to Missouri River cities are 17½ cents and 12½ cents, respectively. On borax, which is borate of soda, and not much more valuable than the soda products involved herein, the rates are on the fifth-class basis, viz, 27 cents and 22 cents, respectively. On common salt, which is chloride of soda, and of which there is a very heavy movement, the rates are 16.5 cents and 14.8 cents, respectively.

A soap manufacturing concern in Kansas City, the only protestant represented at the hearing, objects to the proposed increased rates on silicate of soda, soda ash, and caustic soda. During the year 1915 this concern received 115 cars of silicate of soda, 170 cars of caustic soda, and 80 cars of soda ash. All this movement was in box cars and the average loading was considerably in excess of the minimum car-load weight. This protestant is now purchasing its silicate of soda in Kansas City, a plant manufacturing that product having recently been established at that point. Protestant secures its soda ash from

Hutchinson, Kans., and Detroit, Mich., and its caustic soda from Detroit. The rate from Detroit to Kansas City is 22½ cents, while that from Hutchinson to Kansas City is 10 cents. No increase is proposed in the latter rate.

In support of the present rates protestant submitted exhibits comparing the car-mile earnings therefrom with those from rates on other commodities moving between the same points, and also with the average car-mile earnings on all freight transported by certain western trunk lines. These exhibits have been given due consideration, but it is not deemed necessary to analyze them in detail in this report.

We find and conclude that the proposed rates on these commodities have been justified.

STONE.

It is proposed to increase the rates on stone in carloads from Farley, Iowa, to stations on the Chicago Great Western Railway in Illinois. The present rate is 75 cents per ton and the proposed rates range from 80 cents to \$1.70 per ton. The distances range from 41 miles to 160 miles. Stone dealers in Chicago have pointed to the present rate from Farley as the proper basis for measuring the rates from Chicago. In investigating the merits of that proposition the respondent carrier ascertained that during the last three years only two cars of stone had moved from Farley.

In support of the proposed rates comparison is made with the rates on building stone, which is the kind of stone produced at Farley, from Mantorville, Minn., to equidistant stations on respondent's line in Iowa. The surrounding circumstances and conditions from Mantorville to Iowa stations are substantially similar to those from Farley to Illinois stations. The comparison shows that the proposed rates from Farley are the same or lower, distance considered, than the present rates from Mantorville.

No protestant appeared at the hearing in opposition to the proposed rates. We find that the proposed rates have been justified.

TOILET PAPER.

Commodity rates lower than the western classification basis of fifth class, subject to a minimum weight of 36,000 pounds, on toilet paper, in straight or mixed carloads with certain other kinds of unprinted paper, are maintained between Chicago, Mississippi River cities, and related points, on the one hand, and Missouri River cities and points east and west thereof, on the other. It is proposed to cancel the application of these commodity rates so far as toilet paper is concerned, thus leaving the classification basis of fifth class, minimum weight 24,000 pounds, subject to rule 6-B, to apply on toilet

paper. It is also proposed to provide for the application of fifth-class rates, minimum weight 36,000 pounds, on toilet paper and paper towels, in mixed carloads with certain other kinds of unprinted paper. The minimum earnings per standard car of 36 feet on toilet paper from Chicago to Missouri River cities, for example, are, under the present rate, \$72; under the proposed rate, \$64.80.

It is impossible to load 36,000 pounds of toilet paper in an ordinary box car. The shippers complained about the matter and respondents decided to reduce the minimum carload weight and increase the rates. Protestants have no objection to this change, but they contend that the present commodity rates subject to the higher minimum weight should be continued on mixed carload shipments of toilet paper and other kinds of unprinted paper. The testimony of one witness for respondents indicates that the elimination of toilet paper from the commodity rate mixture was unintentional.

We find that respondents have justified the proposed cancellation of the present commodity rates on toilet paper, in straight carloads, but have not justified the proposed cancellation of such rates on mixed carload shipments of toilet paper with other kinds of unprinted paper.

WRAPPING PAPER.

There are two descriptions of wrapping paper with different commodity rates applying thereon between Chicago, Mississippi River cities, and related points on the one hand, and Missouri River cities, St. Paul-Minneapolis, and related points on the other. One description includes unprinted rag and unprinted oiled, waxed, or paraffined manila paper, in straight or mixed carloads with other unprinted papers, such as blotting, poster, document, manila, and news print. The other description includes printed or unprinted wrapping paper described as rosin, glazed, or vegetable parchment, glassine, grease-proof, and waxed, oiled, or paraffined (other than manila), in straight or mixed carloads with such other articles as paper tablets, wrappers, bags, and boxes or cartons, k. d. The rates on these two descriptions compare as follows between representative points:

To—	From Chicago.		From St. Louis.	
	First description.	Second description.	First description.	Second description.
Kansas City.....	20	28	15	18
Omaha.....	14½	17½	15	18½
St. Paul.....				
Minneapolis.....				

It is proposed herein to transfer oiled, waxed, or paraffined manila paper from the first description to the second description, thus
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placing oiled, waxed, or paraffined manila paper with other oiled, waxed, or paraffined papers. It is said to be difficult to distinguish between waxed manila and other waxed papers. Although this change will have the effect of increasing the rates on oiled, waxed, or paraffined manila paper, the protestants represented at the hearing do not oppose it. We think the change is a logical one, and find and conclude that it has been justified.

Practically all the proposed increased rates found justified herein are published in the same schedules as the proposed increased rates not found justified. The order to be entered will therefore require the cancellation of all the suspended schedules, but respondents may file other schedules not inconsistent with the conclusions herein announced, on not less than five days' notice.

No. 8711.

CROSSETT LUMBER COMPANY

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ARKANSAS & LOUISIANA MIDLAND RAILWAY
COMPANY ET AL.

Submitted February 10, 1917. Decided April 2, 1917.

Rates on wooden silos, k. d., in carloads, from Crossett, Ark., to points east of the Mississippi River and south of the Ohio River not shown to be unjust or unreasonable. Complaint dismissed.

G. F. Thomas for complainant.

Frank W. Gwothney and *R. Walton Moore* for Southern Railway Company, New Orleans & Northeastern Railroad Company, and others.

William Burger for Louisville & Nashville Railroad Company.

T. J. Shelton for Arkansas & Louisiana Midland Railway Company.

George T. Atkins, jr., for Shreveport Chamber of Commerce, intervenor.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The complaint in this case, filed by a corporation engaged in the manufacture of yellow-pine lumber and wooden silos at Crossett,

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Ark., attacks the rates on silos, k. d., in carloads, from Crossett to most points east of the Mississippi River and south of the Ohio River. It is alleged that the rates to points on the Alabama & Vicksburg and the New Orleans & Northeastern railroads are unjust and unreasonable, and that the rates to all the other destinations referred to are unjust, unreasonable, and unduly discriminatory, to the extent to which they exceed certain rates stated in the petition as amended. We are asked to prescribe as maxima "the rates demanded and requested," or such other rates as may be deemed reasonable and just, and to award reparation on past shipments. The Shreveport Chamber of Commerce intervened on behalf of the Western Silo Company of Shreveport, La., but made no specific attack upon the rates from that point.

While some of the rates attacked are alleged to be in violation of sections 2 and 3 of the act, the petition does not state facts sufficient to raise any issue of unjust discrimination or of undue prejudice. No allegation is made that complainant is compelled to pay higher rates than competing shippers from Crossett, nor is reference made to any competing points as being preferred or advantaged by the present adjustment. The petition, therefore, does not properly apprise defendants of any issue other than the reasonableness of the rates, and their objection to the consideration of testimony relating to unjust discrimination and undue preference must be sustained. *Board of Trade of Chicago v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 438, 444; *Stuarts Draft Milling Co. v. S. Ry. Co.*, 31 I. C. C., 623, 624.

Crossett is on the Arkansas & Louisiana Midland Railway, 53 miles north of Monroe, La., which is its junction with the Vicksburg, Shreveport & Pacific Railway, 76 miles from Vicksburg, Miss. Crossett is also served by the Chicago, Rock Island & Pacific and the St. Louis, Iron Mountain & Southern railways, which have lines to Memphis, Tenn. The distance from Crossett to Memphis via the latter line is 200 miles. While Memphis is 69 miles farther from Crossett than is Vicksburg, the short-line distances from Crossett to a large part of the destination territory are via the Memphis gateway. However, neither of the lines from Crossett to Memphis is a party defendant. Complainant's plant is located on the tracks of the Arkansas & Louisiana Midland Railway, and because it desires to give that line the long haul the complaint was restricted to the rates applicable through the Vicksburg gateway.

There are joint through rates on silos from Crossett to points on the Alabama & Vicksburg, the New Orleans & Northeastern, and the Vicksburg, Shreveport & Pacific railways, which are 3 cents per 100 pounds higher than the rates on lumber. These three roads are under a common control and management. To points on all other

lines east of the Mississippi River and south of the Ohio River the through rates from Crossett are based on the lowest combination of rates applicable via the route of movement and generally are made by adding proportional commodity rates of 12 cents per 100 pounds to Vicksburg, or of 17 cents per 100 pounds to Memphis to the class A rates beyond.

In support of its contention that the present rates from Crossett are unjust and unreasonable, complainant's traffic manager filed 33 exhibits, most of which are mere statements of the present rates and the rates asked from Crossett to selected points of destination. These exhibits also show the ton-mile earnings under the present rates and the rates asked, but in many instances the distances used are only estimated and can not be verified, as the junction points via which the traffic moves are not named. A few of the exhibits show comparisons between scattered examples of the rates in issue with the rates on lumber and silos from Shreveport to the same points. Others are mere copies of distance scales on lumber and silos contained in certain tariffs of lines operating west of the Mississippi River. No supporting evidence of the conditions surrounding the few rates compared was offered, consequently we are unable to determine the materiality and probative force to be accorded the comparisons. It was admitted that many of the rates on lumber from Shreveport, with which complainant compared the rates on silos from Crossett, are "paper rates," as there is no movement of lumber from Shreveport into that territory, which itself is a great lumber-producing section. Neither the complaint nor the evidence presented by the complainant discloses with certainty the basis of the rates suggested in lieu of the present rates, but we infer that complainant competes with the silo manufacturer at Shreveport and desires to secure a more favorable relative adjustment. The rates asked, however, do not seem to bear any uniform relation to those in effect from Shreveport. The rates from Shreveport are made in precisely the same way as are the rates from Crossett, and no complaint is made regarding the adjustment of rates from these two points to Vicksburg, their common gateway to the destination territory in issue.

Some contention was made that the rates on silos should bear a definite relation to the rates on lumber, but the rates asked bear no uniform relation to the rates on lumber from either Crossett or Shreveport. In practically all territories, except the southeast, the rates on silos are the same as, or fixed differentials over, the rates on lumber. In southeastern territory the rates on the two commodities are made independently of each other, the rates on silos being

the class A rates, except that rates the same as those on building material apply when lower than the class A rates. The commodity rates which apply on lumber are on a materially lower basis.

Defendants show that the general method of constructing the rates from Crossett is the same as that used in constructing the rates from other points outside of southeastern territory, viz, the lowest combination via the route of movement, which usually makes on the Mississippi River or the Ohio River crossings. Since the rates on silos from all Mississippi River and Ohio River crossings, and also from interior manufacturing points in the southeast to all destinations in that territory are on the same basis, Crossett is at no disadvantage from a relative standpoint. Complainant's testimony concerning the car loading, value, and susceptibility to damage of silos as compared with lumber is not sufficiently comprehensive to warrant a finding as to what rate relationship, if any, should be established as between the two commodities. Complainant shipped about 50 cars of silos into southeastern territory during the past year, and the record shows that manufacturers at Mississippi River and Ohio River crossings, as well as at interior points in the southeast, compete for the business in that territory.

The evidence on complainant's behalf, consisting principally of miscellaneous rate compilations and tariff references, fails to establish the propriety of the rates asked or to show that the rates attacked are unlawful. This finding is without prejudice to the determination of a correct rate relationship between silos, k. d., and lumber in the general investigations of rates on and classification of lumber and lumber products, Docket 8131, now pending.

We find that the rates attacked are not shown to be unjust or unreasonable. It follows that the complaint must be dismissed, and it will be so ordered.

43 I. C. C.

No. 7959.¹
CHARLES PLATTS
v.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY ET AL.

Submitted January 15, 1917. Decided April 2, 1917.

Upon additional evidence adduced upon rehearing, increased charges for the refrigeration of carload shipments of oysters in the shell and less-than-carload shipments of shucked oysters from the Atlantic seaboard to certain western points found justified.

A. E. Beck for complainants.

William L. Barnett, Frederic L. Ballard, and Henry J. Hart for defendants.

REPORT OF THE COMMISSION UPON REHEARING.

CLARK, *Commissioner*:

In our original report in these cases, 39 I. C. C., 690, we held that the defendants had justified the discontinuance of their practice of absorbing the cost of bunker icing for the refrigeration of carload shipments of shucked oysters from the Atlantic seaboard to certain points in the west, but that with respect to shipments of shucked oysters in less than carloads, and of oysters in the shell in carloads, the discontinuance of the absorptions had not been justified. The latter finding was made, as the report shows, because defendants introduced practically no evidence with respect to the reasonableness of the charges. Subsequently, defendants petitioned for a further hearing with respect to the icing charges on carload shipments of oysters in the shell, and on less-than-carload shipments of shucked oysters. The petition was granted, further hearing was had, and the cases are now before us on the whole record.

As stated in the original report, the tariffs under attack provide, in effect, that the cost of original bunker icing must be borne by the shipper, and that the carriers will impose an additional charge, usually \$2.50 per ton,² for ice placed in the bunkers en route.

Complainants do not contend that the refrigeration charges are excessive, or that the rates are unreasonable, their position being

¹ The proceeding also embraces complaint in No. 8192, *Oyster Growers & Dealers Association of North America v. Baltimore & Ohio Railroad Company et al.*

² Effective December 1, 1916, this charge was increased in certain instances to \$4 per ton.

that the transportation rates were made to include the cost of bunker icing and that they are sufficiently high to yield a reasonable remuneration to the carrier even if the icing cost is absorbed. Unless otherwise specified, rates and refrigeration charges are stated herein in cents per 100 pounds.

The evidence introduced at the original hearing showed that oysters move almost invariably in refrigerator cars; that the cost of the bunker ice used for refrigerating carload shipments of shucked oysters averages between \$12 and \$16.24 per car, or approximately 1 cent per gallon of oysters; that the average loading of shucked oysters is approximately 17,400 pounds; that the first-class rate of 78.8 cents from South Norwalk, Conn., to Chicago, Ill., 969 miles, yields \$137.11 per car, or 14.1 cents per car-mile; and that the Pennsylvania's earnings on 336 carloads of shucked oysters moving in 1914 were \$124.76 per car, equivalent to 13.1 cents per car-mile, which is less than its average revenue per loaded car-mile on all traffic. We said that these earnings could "hardly be deemed excessive for the transportation of a valuable and perishable product which moves almost invariably in refrigerator cars, in expedited trains, in only one direction, and during only part of the year," and we held, therefore, that the defendants had established the reasonableness of the increased charges, so far as carload shipments of shucked oysters were concerned.

CARLOAD SHIPMENTS OF OYSTERS IN THE SHELL.

We observed in our original report that the movement of oysters in the shell is relatively small, approximately 95 per cent of the oysters which move from the Atlantic seaboard being shucked before shipment. The evidence adduced upon rehearing confirms the correctness of that observation. Only two carloads of oysters in the shell moved via the Pennsylvania's Star Union line during the first six months of 1916. During the year 1914 the Pennsylvania Railroad Company transported only 36 carloads of oysters in the shell from the Atlantic coast to points in central freight association territory. During the period from January 1, 1916, to May 8, 1916, only 14 carloads of oysters in the shell originated at points on the New York, New Haven & Hartford Railroad, which serves the important producing territory along Long Island Sound. Of these 14 carloads 11 were consigned to the Pacific coast and 3 to Chicago. The shipments consigned to the Pacific coast were "seed" oysters, sent there to be replanted. The rates to the coast were not involved in this proceeding.

Defendants have submitted detailed evidence with respect to their earnings on this traffic. Of the 36 carloads of oysters in the shell

which moved via the Pennsylvania in 1914, 84 carloads moved from Sayville, N. Y., to St. Louis, Mo., 1 carload from Sayville to Cleveland, Ohio, and 1 carload from Crisfield, Md., to Paducah, Ky. The average weight of these shipments was 19,167 pounds, the weighted average distance 1,097.3 miles, the average earning per car \$115.89, and the revenue per car-mile 10.6 cents. At least 19 of the cars to St. Louis moved under ice in refrigerator cars. The cost of icing these cars was \$194.11, or \$10.22 per car. If that icing cost is deducted from the average revenue of \$116.18 per car on the 34 shipments to St. Louis, the result is a net revenue of \$105.96 per car, or 9.53 cents per car-mile for the distance of 1,111 miles from Sayville to St. Louis. The Pennsylvania's average earnings per loaded car-mile on all traffic for the year ended June 30, 1916, were 17.139 cents. For the loaded and empty movement combined the average earning was 11.03 cents per car-mile. It will be noted that the earnings on oysters in the shell, per loaded car-mile, for the haul from Sayville to St. Louis, after deducting the icing charges, were 1.5 cents less than the Pennsylvania's average revenue per car-mile in 1916 for the combined loaded and empty movement.

The evidence submitted by the New York, New Haven & Hartford is similar in nature, but as only three of the cars which that carrier originated during the period selected were consigned to points in the territory involved in this proceeding, the evidence is not as helpful as that already detailed.

Prior to 1905 oysters in the shell moved on the classification basis, third class in any quantity. In that year a carload fourth-class rate of 35 cents from New York to Chicago was provided, minimum weight 24,000 pounds. Corresponding rates were published from other points. The rate of 35 cents was later increased to 40 cents, and following *The Five Per Cent Case*, 32 I. C. C., 325, it was further increased to 42 cents. Effective January 1, 1916, the any-quantity rating was abolished. The third-class rating was retained for carload shipments, minimum weight 24,000 pounds, but the less-than-carload rating was increased to second class.

It had been the practice of defendants to absorb the cost of bunker icing on shipments paying the third-class rate or higher and weighing 10,000 pounds or more. As the commodity rates mentioned in the preceding paragraph were lower than third class, the cost of icing was not absorbed when these rates were assessed. Whether the third-class any-quantity rating or the carload commodity rate was applicable depended upon which made the lower aggregate charge. Prior to the cancellation of the any-quantity rating the average loading of oysters in the shell was less than the minimum weight prescribed in connection with the carload commodity rate, and the class

rate therefore frequently made a lower charge than the commodity rate. Based on the average weight of 19,167 pounds shown in one of the exhibits and the third-class rate of 66.4 cents, the freight charges on a carload of oysters in the shell from Sayville to St. Louis would be \$127.27, while the commodity rate of 54.1 cents, minimum 24,000 pounds, would produce a charge of \$129.84. In such instances it was the practice to apply the class rate and absorb the cost of bunker icing.

A comparison between the rates and earnings on oysters in the shell and the rates and earnings on shucked oysters leads to the conclusion that the carriers should no more be required to absorb the icing charges on the one commodity than on the other. A comparison of the car-mile earnings shows that the revenues derived from the transportation of oysters in the shell to the territory involved in this proceeding are even lower than the earnings which we found in our original report were derived from the transportation of shucked oysters. The average loading of carload shipments of oysters in the shell, not including those consigned to the Pacific coast, is only slightly greater than the average loading of shucked oysters. While shipments of shucked oysters move in considerable volume throughout the fall and winter months, the carload movement of oysters in the shell to the destinations here in question may be said to be negligible. Moreover, shucked oysters in carloads move under first-class rates, whereas oysters in the shell in carloads move under third-class rates, or commodity rates lower than third class.

LESS-THAN-CARLOAD SHIPMENTS OF SHUCKED OYSTERS.

For the refrigeration of less-than-carload shipments of shucked oysters, the tariffs under attack provide for charges on a sliding scale, varying with the first-class rate, as follows:

When first-class rate, in cents per 100 pounds, is—	Charge, in cents per 100 pounds, for iced refrigeration service.
50 and less	5
Over 50 and including 60	6
Over 60 and including 70	7
Over 70 and including 80	8
Over 80 and including 90	9
Over 90	10

In our original report we said that "the defendants are apparently entitled to a reasonable charge for the icing of less-than-carload shipments, when they perform that service, but we must find on the record that the propriety of the present charges has not been established." Additional evidence has now been submitted by defendants

with a view to showing that the charges provided for in the sliding scale are just and reasonable for the service performed.

The rates in the sliding scale are applied only when the carrier provides what is known as an established refrigeration service for less-than-carload shipments. Ordinarily less-than-carload shipments of shucked oysters are made by express, or as ordinary package freight, in which case the oysters are placed in small cans, which, in turn, are packed in ice in barrels or other containers. The shippers thus furnish their own refrigeration.

Sometimes less-than-carload shipments are offered in such large quantities that the carrier deems it advisable to offer a scheduled service for this traffic. Refrigerator cars are advertised to leave the producing points on specified days. The carrier furnishes the car, pre-iced and pre-cooled, and furnishes additional ice en route if necessary. The charges shown in the sliding scale apply only when this special service is performed; and the carrier offers the service only when, in its judgment, it is advisable to do so. The Pennsylvania maintained an established service from some of the producing points in the fall of 1915, but at the time of the second hearing, in November, 1916, neither that carrier nor the New York, New Haven & Hartford was advertising or performing such a service, and the rates in the sliding scale were therefore "paper rates." Some doubt was expressed as to whether the service would be re-established during the season of 1916-17. Defendants state in their brief that the Pennsylvania resumed the established refrigeration service from certain points on Chesapeake Bay on November 21, 1916, two weeks after the hearing.

It is not the general practice of the carriers in trunk line territory to provide an established refrigeration service for the transportation of any commodities in less-than-carload quantities; nor has it been their custom to absorb the cost of refrigerating commodities other than oysters.

The sliding scale applies throughout official classification territory, not only on shipments of oysters, but on other perishable commodities for the transportation of which an established refrigeration service is maintained. It will be observed that a rate of 8 cents is provided for the refrigeration service from New York to Chicago, the first-class rate being 78.8 cents. The rate of 8 cents was decided upon because it represented, in defendants' judgment, approximately the same charge per 100 pounds as is paid by carload shippers. It is estimated that the average cost of icing a carload of perishable commodities from New York to Chicago is approximately \$16. This corresponds closely with evidence submitted at the first hearing which showed that the average cost of icing

188 carloads of shucked oysters moving from various producing points in the east to destinations in central freight association territory was \$16.24 per car. It was also estimated that the average loading of perishable commodities moving under refrigeration is 20,000 pounds per car. We found in our original report that the average loading of shucked oysters is 17,400 pounds. The estimated icing cost of \$16 per car divided by the estimated average loading of 20,000 pounds, gives 8 cents per 100 pounds as the average cost of refrigeration on carload shipments of perishable commodities between New York and Chicago and that was thereupon determined upon as a fair charge to impose for the refrigeration of less-than-carload shipments. To points less distant than Chicago, the rate was made somewhat lower, as the scale shows, and to points more distant, somewhat higher. In justification of this sliding scale, defendants maintain, without contradiction, that the cost of refrigeration is usually greater for long distances than for shorter distances. Five cents per 100 pounds was made the minimum charge because, it is said, a lower rate than that would not pay the actual cost of the icing service. The rate of 8 cents per 100 pounds from New York to Chicago amounts to approximately 1 cent per gallon of oysters, the same as we approved in the original report for carload shipments.

Defendants submitted evidence in detail with respect to 99 less-than-carload shipments of shucked oysters which moved in 16 cars from Cambridge, Md., to Chicago in the fall of 1915, when the Pennsylvania maintained an established refrigerator service from certain points on Chesapeake Bay. The total refrigeration charges, based on the 8-cent rate, amounted to \$79.99, which was \$118.61 less than the actual cost of the initial icing at point of origin. The average weight of the shipments was 6,241.5 pounds. No other commodities were placed in these cars at point of origin, and the witness was unable to say whether or not other freight was picked up en route.

We conclude and find, upon consideration of all the evidence of record, that defendants have established the propriety of the increased charges in question, both as to carload shipments of oysters in the shell and as to less-than-carload shipments of shucked oysters. An order will be entered dismissing the complaints.

43 I. C. C.

No. 4198.
IN THE MATTER OF EXPRESS RATES, PRACTICES,
ACCOUNTS, AND REVENUES.
RELEASED RATES.

Submitted November 28, 1916. Decided April 2, 1917.

Rates authorized for the transportation by express of property, except ordinary live stock, dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value.

A. E. Helm for Public Utilities Commission of Kansas.

J. H. Henderson for Board of Railroad Commissioners of Iowa.

W. H. Chandler for National Industrial Traffic League and Boston Chamber of Commerce.

J. C. Lincoln for Merchants' Association of New York.

F. S. Holbrook and *Branch P. Kerfoot* for Wells Fargo & Company.

D. S. Elliott for American Express Company.

T. B. Harrison for Adams Express Company and American Express Company.

E. M. Williams for Adams Express Company and Southern Express Company.

Robert C. Alston for Southern Express Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

For many years, if not from the origin of the express business, the principal express companies, hereinafter called petitioners, maintained rates, dependent upon the value of the property as declared by the shipper, or as agreed upon for the purpose of determining the rate to be applied, by which declaration or agreement the shipper was bound. He was estopped from recovering more than that value in case of loss of or damage to the property. *Adams Express Co. v. Croninger*, 226 U. S., 491.

Following our report of May 7, 1915, *in re the Commons Amendment*, 33 I. C. C., 682, and responsive to supplemental order No. 18 in Docket No. 4198, petitioners, Adams Express Company, American Express Company, Canadian Express Company, Canadian Northern Express Company, Great Northern Express Company, National Express Company, New York & Boston Despatch Express Company, Northern Express Company, Southern Express Company, Wells

Fargo & Company, Western Express Company, and Dominion Express Company, amended certain of their classification rules, also the uniform express receipt, effective June 2, 1915, to provide for the application of rates dependent upon the actual value of the property transported.

By amendment approved August 9, 1916, so much of the Cummins amendment approved March 4, 1915, as reads as follows:

Provided, however, That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules.

was amended to read as follows:

Provided, however, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this act to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary live stock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

Petitioners subsequently petitioned the Commission for an order authorizing the maintenance of express rates dependent upon the value of the property as declared in writing by the shipper or as agreed upon in writing, and submitted for approval proposed classification rules and form of express receipt, embracing changes that such an order would require. Thereupon we entered upon a hearing concerning the propriety of the issuance of such an order.

Representatives of shippers, hereinafter referred to as protestants, objected to that provision of the receipt requiring the presentation

of certain classes of claims for loss or damage within four months, and to the establishment of rates for the transportation of ordinary live stock dependant upon the value of the stock transported. They urge an extension of the period for filing claims from four months to six months as fixed by carriers in freight bills of lading. The Cummins amendment makes it unlawful to fix a period for filing claims shorter than four months and provides:

That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

Petitioners interpret this proviso as limiting the application of the four months' clause to claims arising out of undisclosed loss or damage, knowledge of which is peculiarly in possession of the consignee or claimant and for reasons that are obvious should, they say, be presented promptly. Protestants would offer no objection to the four months' provision provided it is applied only to concealed loss and damage claims.

The four months' provision has been in force for a number of years, and prior to June 2, 1915, the effective date of the Cummins amendment, was applied to all claims for loss or damage. It is not in conflict with the provisions of the act and the evidence of record does not warrant a finding that it is or would be unreasonable as applied to shipments by express.

Forms of shipping contracts for live stock, paintings, statuary, and wax figures were also submitted by petitioners, but as the forms now in use were not prescribed by us, as were the classification, uniform receipt, etc., our approval is not necessary now. Obviously, however, such contracts should not contain any provisions that are in conflict with the terms of the act or with the conclusions reached herein.

Respecting ordinary live stock as the term is defined in the amendment of August 9, 1915, it is urged by protestants that the maintenance of different rates for animals of the same class, according to the value of each, is by the amendment prohibited, and in support thereof they direct attention to the following expression in the report of the Senate Committee on Interstate Commerce which accompanied the bill:

With respect to ordinary live stock as defined in the bill, there can be no rate dependent either upon agreed or released value, and in the event of loss or damage, the carrier must respond for the actual value of the property. The carrier will be permitted to make such rate on ordinary live stock as will compensate for the service, including liability, but the rate can not vary according to the value of each animal that may be loaded into a car.

There will remain the right on the part of the carrier to classify different kinds of animals within the definition of ordinary live stock, but when so classified there can be no lawful variance in rates because one carload of such animals may be more valuable than another.

They contend that rates for the transportation of ordinary live stock should be stated in cents per 100 pounds without reference to the value.

Petitioners do not propose rates for the transportation of ordinary live stock dependent upon agreed or released value. They say that they have the right to maintain existing rates which are dependent upon the actual value of the live stock; and for the transportation of live stock, except that which is chiefly valuable for breeding, racing, show purposes, or other special uses, they apparently plan to continue their present rates. By way of illustration, the rates now applicable to shipments of horses are predicated upon a maximum value of \$200 per head. If the value exceeds that sum an additional charge is made for the excess value, which charge varies with the distance the shipment moves.

The purpose of the amendment of August 9, 1916, as stated in the report of the Senate Committee on Interstate Commerce, was—to restore the law of full liability as it existed prior to the Carmack amendment of 1906, so that when property is lost or damaged in the course of transportation under such circumstances as to make the carrier liable recovery is had for full value or on the basis of full value.

It is clearly the purpose of the Cummins amendment, as amended, to invalidate all limitations of liability for loss, damage, or injury to ordinary live stock caused by the initial carrier or by another carrier to which shipment may be delivered or which may participate in transporting it, notwithstanding any representation or agreement or release as to value. While it does not appear to be the purpose of petitioners to attempt a limitation of liability, a continuance of the present method of stating rates for ordinary live stock would require a representation of the value, which is declared to be unlawful.

The act, as amended, fixes upon the carrier liability for the full actual loss, damage, or injury caused by it to ordinary live stock and invalidates any limitation or attempted limitation of that liability, wherever or in whatever form it is found. Ordinary live stock is excepted from the property as to which we are empowered to authorize or require the establishment of rates dependent upon declared or released value. If rates on ordinary live stock dependent upon declared value could lawfully be maintained without authorization by the Commission, there might and probably would be instances in which conflict would arise as between the liability imposed by the

act upon the carrier and the prohibitions of section 10 of the act affecting shippers. We can not, in view of the provisions of the law, authorize or sanction such rates upon ordinary live stock; neither can they lawfully be maintained upon any other character of traffic except under authorization duly granted by the Commission. Under such authority both shipper and carrier are fully protected and the full spirit of the law is observed.

The shipper or lawful holder of the receipt or bill of lading for ordinary live stock should be free to press his claim for recovery in full for loss, damage, or injury caused by the carrier, and rates for the transportation of such live stock may not be stated in a manner to require a representation of the value. This is not saying that value may not be considered and duly weighed as an element in determining what reasonable rates shall be established.

As to live stock the order herein will apply only to that which is chiefly valuable for breeding, racing, show purposes, or other special uses.

An order will be entered authorizing the maintenance of existing express rates dependent upon the declared or released value of the property transported, except ordinary live stock, also authorizing the form of express receipt to be used.

48 I. C. C.

No. 9155.

FAIRMONT CREAMERY COMPANY

v.

**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.**

**PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
630 AND 2318.**

Submitted January 2, 1917. Decided April 2, 1917.

Upon complaint that rates on petroleum fuel oil from Kansas and Oklahoma refineries to Omaha, Nebr., are unreasonable and unjustly discriminatory; *Held*, That defendants have failed to justify the rates attacked which have been increased since January 1, 1910. Reasonable maximum rates prescribed for the future. Reparation awarded. Fourth section relief denied.

M. S. Hartman for complainant.

J. B. Coffey and *F. E. Andrews* for Atchison, Topeka & Santa Fe Railway Company.

C. S. Burg for Missouri, Kansas & Texas Railway Company.

H. H. Holcomb for Chicago, Burlington & Quincy Railroad Company.

C. C. P. Rausch for Missouri Pacific Railway Company.

B. W. Scandrett for Union Pacific Railroad Company.

W. T. Hughes and *W. F. Dickinson* for Chicago, Rock Island & Pacific Railway Company.

R. B. Scott, H. G. Herbel, W. T. Hughes, F. E. Andrews, C. S. Burg, H. A. Scandrett, and *B. W. Scandrett* for defendants.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant, a corporation engaged at Omaha, Nebr., in the manufacture and sale of butter and allied products, by complaint, filed August 26, 1916, alleges that the rates charged by defendants for the transportation of fuel oil in tank cars from Kansas and Oklahoma refineries to Omaha are unreasonable and unjustly discriminatory. Reparation is asked. Those portions of Fourth Section Applications No. 630, filed by F. A. Leland, agent, and No. 2318, filed by W. A. Poteet, agent, by which authority is sought to charge

lower rates for the transportation of fuel oil in tank cars from certain originating points to Omaha than are contemporaneously maintained on like traffic from or to intermediate points, were heard with the complaint. Rates are stated in cents per 100 pounds.

The complaint recites that prior to March 22, 1916, defendants maintained a rate of 15 cents on fuel oil in tank cars from Kansas refining points to Omaha. Defendants deny that assertion, and from examination of our tariff files it appears to be unfounded. From April 14, 1911, to February 28, 1916, a rate of 17 cents applied from Coffeyville, Kans., to Omaha on fuel oil as well as on high-grade oils, such as gasoline and kerosene. The same rate was established from Chanute, Erie, and other points in Kansas over certain routes shortly after it became effective from Coffeyville. For some time prior to February 28, 1916, the rate from Oklahoma refining points to Omaha was 20 cents on high-grade oils and 18 cents on fuel oil.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, decided August 13, 1915, we considered rates on high-grade oils from Kansas and Oklahoma refineries to points in western trunk line territory, including Omaha, and rates to St. Louis and Chicago on low-grade oils, such as asphalt, asphaltum, road oil, and fuel oil. We prescribed maximum rates to Omaha of 20 cents from Kansas refineries and 23 cents from Oklahoma refineries. For the transportation of low-grade oils from Kansas and Oklahoma refineries to St. Louis and Chicago we fixed maximum rates of 15 cents and 20 cents, respectively, and said:

What we have found with respect to rates on the lower grades of oil when shipped to St. Louis and Chicago should be applied in just relationship to other points, although not specifically referred to in this proceeding.

Since February 28, 1916, the rates to Omaha on high-grade oils, and also on fuel oil, have been 20 cents from Kansas refineries and 23 cents from Oklahoma refineries. On asphalt, asphaltum, and petroleum asphaltum, via all routes, and on road oil for delivery via the Wabash Railroad only, the rates have been 15 cents from Kansas points and 18 cents from Oklahoma points. Rates on road oil for delivery by other lines are the same as those on high-grade oils.

Defendants explain that when rates from Kansas and Oklahoma refineries to Omaha were readjusted subsequent to our decision in *Midcontinent Oil Rates*, *supra*, they grouped fuel oil with the higher grade oils because that had been their general practice, and they considered that the conditions affecting transportation did not justify different rates.

Complainants assert that fuel oil and road oil are practically the same commodity, the principal distinction being that road oil is slightly heavier. They contend that, differences in value and risk

of carriage considered, it is unreasonable and discriminatory to maintain the same rates on fuel oil as on high-grade oils, and ask that rates of 15 cents from Kansas refineries and 18 cents from Oklahoma refineries be prescribed.

Exhibits submitted by complainants indicate that, tested by the earnings per ton-mile and per car-mile, the rates asked are higher than the rates on fuel oil from Kansas and Oklahoma refineries to St. Louis and Chicago found reasonable in *Midcontinent Oil Rates, supra*; or the rates from Chicago, St. Louis, St. Paul, Duluth, and other points to Omaha on linseed oil, pitch, coal tar, and petroleum tar in barrels, and on creosote oil, lard, glycerine, sulphuric acid, asphaltum, and road oil in tank cars. Many of these commodities are of much greater value than is fuel oil, but it is not shown that the conditions surrounding their transportation are similar. There are large oil refineries at St. Louis and Chicago, and defendants say that the rates on oil to those points are controlled by competitive and other conditions which do not similarly affect the rates to Omaha.

Complainant also urges that on basis of the present rates the transportation charges on a given quantity of fuel oil are greater than on the same quantity of gasoline, an oil many times more valuable and much more hazardous to transport. For example, the weight of 10,000 gallons of gasoline, based on the prescribed estimated weight of 6.6 pounds per gallon, is 66,000 pounds. The same quantity of fuel oil weighs 74,000 pounds, based on the estimated weight of 7.4 pounds per gallon. Under the current rate of 23 cents from Oklahoma refineries to Omaha the freight charges on 10,000 gallons of fuel oil would be \$170.20, while the charges on the same quantity of gasoline would be only \$151.80.

The rates assailed having been increased since January 1, 1910, the burden of proof to show that they are just and reasonable is upon defendants. They maintain that a question of classification only is involved, and their evidence, which is addressed principally to that issue, shows that fuel oil is classified with the higher grade oils at fifth class in the official, the western, the Illinois, and the Iowa classifications; that to Omaha from all producing points except Casper, Wyo., fuel oil is rated the same as are high-grade oils; that fuel oil is a refined product similar to kerosene, which latter commodity is also used for fuel in some instances; and that road oil, a residual product, and fuel oil are used for different purposes and hence are not competitive.

The physical characteristics of road oil and fuel oil, the uses to which they may be put, and the propriety of rating them the same as the higher grade oils have been considered in other cases. In

Central Commercial Co. v. A., T. & S. F. Ry. Co., 26 I. C. C., 373-375, we said:

Residuum or road oil is the residue from crude petroleum, after the higher and more volatile oils have been extracted. It is used by pavers and roofers for fluxing solid asphalt, in road construction for dust-laying purposes, or as a binder for macadam roads, and for fuel purposes where high-grade oils can not be used on account of their cost. It is heavy, black, and nontransparent, * * *.

Our report in *National Petroleum Asso. v. A., T. & S. F. Ry. Co.*, 37 I. C. C., 287, 289, 292, 293, stated:

So far as this record indicates, the term "fuel oil" is applied in the trade to any oil that may be used in a furnace for heating metal or under a boiler for making steam. In rare cases fuel oil may be a distillate, but more frequently it is a residual product; in the latter case it may be refined or it may consist of the dregs of residuals. Oil used for fuel purposes may also be used to lay dust on streets or roads, to flux asphalt, and for a large number of other purposes.

* * * * *

As a matter of fact no product of petroleum can be singled out as being fuel oil only. Any petroleum product that may be made liquid by steam and pumped from tank cars for burning or that can be used in a furnace for heating metal or under a boiler for making steam is a fuel oil. Oil sold for road purposes may be a fuel oil in the sense that it can be used also for fuel purposes; on the other hand, oil sold for fuel oil may not infrequently be entirely suitable also for road and other purposes.

* * * * *

No line can be drawn between fuel oil and the residual products of complainants' refineries. No inspector could determine by an examination of the complainants' shipments whether the oil contained in them was fuel oil, road oil, or tailings. The various oils look alike, are of the same consistency, and are produced by the same method. If the use to which the tailings may be put defines what it is, then it would quite as often be road oil as fuel oil, or it might prove to be any one of the numerous other oils known to the trade and used for various purposes. It is now well settled by our decisions, and no other finding is practicable, that we can not undertake to determine whether a rate is reasonable or unreasonable by ascertaining to what use the product shipped is put, and the carriers must adjust their tariffs in conformity with that principle.

And, in *Fairmont Creamery Co. v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 661, 662, we said:

The tendency of the Commission in recent cases has been to classify the various petroleum products to a limited extent and to establish lower rates on such low-grade products as fuel oil, etc., than are contemporaneously maintained on the higher grade of products, such as gasoline, kerosene, naphtha, etc.

Defendants now maintain lower rates on fuel oil than on high-grade oils from Kansas and Oklahoma refineries to St. Louis and Chicago and from Casper, Wyo., to Omaha. Certain of them also maintain materially lower rates on fuel oil than on refined oils from Texas producing points to points in Louisiana and other states.

For many years they voluntarily maintained a rate of 17 cents on fuel oil, as well as on other and higher grades of oil, from Kansas points to Omaha. For the average distance of 344 miles from Kansas refineries to Omaha a rate of 17 cents would yield about 9.8 mills per ton-mile and about 34.6 cents per car-mile, based upon a weight of 70,000 pounds, which is somewhat less than the average weight of complainants' shipments from Kansas points. The rate of 15 cents asked would yield 8.7 mills per ton-mile and 30.5 cents per car-mile. For the average distance of 449 miles from Oklahoma refineries to Omaha the rate of 18 cents asked and which, as stated, was formerly in effect, yields about 8 mills per ton-mile and about 29.6 cents per car-mile, based on an approximate average loading of 74,000 pounds per car.

Upon all of the facts of record we are of opinion and find that defendants have not justified the increased rates and that reasonable maximum rates for the transportation of fuel oil in tank cars to Omaha should not exceed 15 cents from Kansas refineries and 18 cents from Oklahoma refineries. An order will be entered accordingly.

We further find that since August 26, 1914, complainant made shipments of fuel oil from Kansas and Oklahoma refining points to Omaha; that it paid and bore charges thereon which were unreasonable to the extent to which they exceeded the charges which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation.

With respect to the fourth section applications heard with the complaint, certain of defendants stated that so far as they knew rates on fuel oil from Kansas and Oklahoma refining points to Omaha via their lines are not lower than the rates maintained from or to intermediate points. No evidence was offered in justification of departures from the long-and-short-haul rule of the fourth section which may exist in connection with rates over other routes. The applications accordingly will be denied to the extent to which they are here involved.

43 I. C. C.

No. 8642.
LA CROSSE SHIPPERS' ASSOCIATION ET AL.
v.
CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY
COMPANY ET AL.

Submitted September 25, 1916. Decided April 2, 1917.

1. Rates on coke in carloads from Indianapolis, Ind., and from Chicago, Joliet, and Peoria, Ill., to La Crosse, Wis., found to have been justified. Complaint dismissed.
2. In the absence of proof of damage to the shipper, an incidental contravention of the long-and-short-haul rule of the fourth section over an alternative route does not of itself afford a sufficient basis for an award of reparation.
3. Where the record fails to indicate clearly the character of the shipping instructions given the initial carrier, the Commission is left with no adequate grounds for a finding of misrouting.

S. J. Bolton and *W. W. West* for complainant.

K. F. Burgess and *W. A. Holley* for Chicago, Burlington & Quincy Railroad Company.

E. J. Eddy for Chicago, Indianapolis & Louisville Railway Company.

J. W. Clark for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

This complaint was filed February 12, 1916, by the La Crosse Shippers' Association on behalf of five shippers located at La Crosse, Wis. The allegations are that defendants' rates on coke in carloads from Indianapolis, Ind., and from Chicago, Joliet, and Peoria, Ill., to La Crosse are unreasonable and unjustly discriminatory, in violation of sections 1, 2, 3, and 4 of the act. Reparation is asked and the establishment of reasonable rates for the future. Rates are stated herein in dollars and cents per net ton on the carload basis. As the rates assailed were increased subsequent to January 1, 1910, the burden of establishing that they are just and reasonable rests upon defendants.

Formerly the rate to La Crosse from Chicago, Joliet, and Peoria, and from Milwaukee, Wis., was \$1.60. On February 28, 1915, the rate from the three points first named was increased to \$1.85 per-

suant to *Rates on Coke from Chicago and Peoria, Ill.*, 32 I. C. C., 543. On the same date the Railroad Commission of Wisconsin permitted the carriers serving Milwaukee to increase the intrastate rate from Milwaukee to La Crosse to \$1.85. These changes did not alter the relative adjustment of rates in effect between points of origin and point of destination. The rates from Indianapolis to La Crosse are made upon a combination basis either via Kankakee, Ill., or via Chicago, from which points the rate of \$1.85 applies as a factor of the through charges to La Crosse. The rate from Indianapolis to Chicago is \$1.30 and the rate from Indianapolis to Kankakee \$1.10. Complainant confines its evidence to the rate of \$1.85, and expresses no dissatisfaction with those factors of the through charges applicable south of Chicago and Kankakee. It is contended that \$1.50 would be a reasonable rate to La Crosse from Chicago and points taking the same rate.

The substance of complainant's contention is that the rate of \$1.85 is unreasonable when compared with rates on coke to other points in the same territory, particularly St. Paul, Minn. No testimony is adduced to show specifically the form of the alleged violation of sections 2 and 3 of the act. Requested to state the basis of the allegation of discrimination, complainant refers to the fact that the rate from Chicago to La Crosse is the same as the rate from Chicago to St. Paul, a more remote point, and asserts that on coal and most other commodities from Chicago, La Crosse is accorded a lower basis of rates than is St. Paul. From this it is contended that the present adjustment of rates on coke creates "a discrimination against the commodity." Complainant admits, however, that the competition between coal and coke at La Crosse is not affected materially by the competition between coal and coke at St. Paul.

Several exhibits are offered by complainant in which comparisons are made of the rates, distances, and ton-mile earnings to La Crosse from Chicago and Milwaukee, Wis., with the rates, distances, and ton-mile earnings from the same points to other destinations in the same general territory. Reference is made to numerous points more distant from Chicago than is La Crosse to which the rate of \$1.85 is applicable. Complainant also directs attention to the rate of \$1.50 effective to stations on defendant Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington, from Prairie du Chien to Calvert, Wis., inclusive, the latter point about 5 miles south of La Crosse; also to the joint rate of \$1.60 participated in by the Burlington to points on the La Crosse & Southeastern Railway, hereinafter called the Southeastern, a local carrier running south from La Crosse to Stoddard, Wis., thence southeast to Viroqua, Wis., a total distance of 42 miles. One of complainant's exhibits emphasizes the differences

between rates on soft coal and rates on coke from Chicago and Milwaukee to various destinations in Iowa and Wisconsin, but its purpose is not made clear. Apparently it has little evidential value in this proceeding because, speaking generally, it may be said there is no uniformity in the relation between rates on the two commodities.

It is observed that some of the exhibits submitted by complainant relate almost exclusively to destinations and rates on the Chicago & North Western and the Chicago, Milwaukee & St. Paul railways, which serve La Crosse from Milwaukee as well as from Chicago. The rate on coke published by these carriers to La Crosse from both Chicago and Milwaukee is \$1.85. Although complainant asserts that "this Commission should consider the reasonableness of the rate not from Chicago alone but from the group," the only delivering carrier named as defendant is the Burlington, which does not reach Milwaukee. While it is quite competent to compare rates and distances over a defendant's line with those over another line or lines not named as defendants, in the instant case, when, as a matter of fact, complainant is challenging a wider rate adjustment than that specifically attacked by the complaint, we are constrained to remark that a fairer and more complete presentation of the situation would probably have been secured by naming as defendants all participating carriers interested in the adjustment.

Defendants assert that with respect to La Crosse, Milwaukee is the nearest point at which coke is produced, and that it has been their purpose to maintain a basis of rates from Chicago, Joliet, and Peoria which would enable producers at those points to compete with producers at Milwaukee; that there is an interdependence of the rates from Chicago and Milwaukee to La Crosse due to the fact that the rate from Milwaukee is used not only as a local rate but also as a factor of the combination rates applicable via the cross-lake lines; and that on coke traffic from the points of origin under consideration La Crosse and St. Paul have been included in the same destination group for many years. They contend that the rate to St. Paul has been held to a low level by competitive conditions at that point, and that the rate to La Crosse is not only reasonable but relatively low.

With respect to stations on the Burlington, from Prairie du Chien to Calvert, inclusive, defendants state that these points are in a different rate group from La Crosse, and that the movement of coke to such stations is insignificant; that, with the exception of Prairie du Chien, the rates are all paper rates, induced by the rate of \$1.60 in effect to points on the Southeastern. It is testified that the Chicago, Milwaukee & St. Paul connects with the Southeastern at Viroqua and Westby, Wis., and publishes a rate of \$1.60 to points on the latter road, which rate is met by the Burlington.

The following table shows the distances, rates, and ton-mile earnings from the points of origin involved to La Crosse and St. Paul via the Burlington:

From—	To La Crosse.			To St. Paul.		
	Dis- tance.	Rate.	Per ton- mile.	Dis- tance.	Rate.	Per ton- mile.
	<i>Miles.</i>		<i>Mills.</i>	<i>Miles.</i>		<i>Mills.</i>
Chicago.....	298	\$1.85	6.20	431	\$1.85	4.20
Joliet.....	284	1.85	6.51	417	1.85	4.43
Peoria.....	308	1.85	6.00	440	1.85	4.20

¹ Elgin, Joliet & Eastern Railway to Aurora, Ill., thence via Chicago, Burlington & Quincy Railroad.

Defendants submit an exhibit showing the rates on coke from Chicago and Peoria and from St. Louis, Mo., to points in Iowa and Missouri for distances similar to the distances from Chicago to La Crosse; also a table showing the present rates, distances, and ton-mile earnings from all the points of origin to La Crosse in comparison with the earnings based on the rates which complainant seeks to have established.

Apparently complainant would have us consider distance as the controlling element in this case, but obviously other aspects must be borne in mind when considering group rates and their application to a commodity such as coke. Most adjustments of rates on a group basis result in some inequalities when distance alone is considered, but such inequalities are not of necessity unreasonable or unjust. The present record does not disclose that the grouping of La Crosse with St. Paul has worked an injury to the La Crosse shipper.

Upon the whole record we are of opinion and find that the rates assailed have not been shown to be unjustly discriminatory or unduly preferential, and that defendants have justified the reasonableness of the rates involved herein.

Complainant alleges that the rate of \$1.85 from Chicago to La Crosse violates the fourth section of the act in that the Burlington participates in a joint rate of \$1.60 on coke to points on the Southeastern applicable on traffic routed via La Crosse. Comment is also made on the fact that the tariff naming the rate of \$1.60 contains a provision in accordance with rule 77 of Tariff Circular 18-A, that upon reasonable request therefor rates not in excess of those from or to more distant points would be established.

The Burlington connects with the Southeastern both at Stoddard and at La Crosse. The rate from Chicago to Stoddard is \$1.50. At the time of the hearing the Burlington published a tariff which per-

mitted interchange of coke traffic with the Southeastern not only at Stoddard, the nearest junction point for traffic from Chicago and via which there was no violation of the fourth section, but also at La Crosse. A witness for the Burlington testified that the route via La Crosse was an alternative one, established for the convenience of dealers at La Crosse who might desire to divert shipments of coke to points on the Southeastern, and that practically all traffic has been interchanged at Stoddard. Subsequent to the hearing the Burlington canceled the tariff permitting interchange at La Crosse, and specifically provided that rates to points on the Southeastern would apply only via Stoddard, thereby eliminating La Crosse as a point of interchange.

An examination of defendant's tariffs on file with the Commission discloses that the rate of \$1.60 to points on the Southeastern and the rate of \$1.85 to La Crosse were commodity rates carried in the same tariff. While rule 77, mentioned above, appears on the front page of the tariff, it can not be interpreted as applying to La Crosse, to which point, as stated, a commodity rate was concurrently in effect with the lower rate to points on the Southeastern. It is clear, however, that the maintenance of a lower rate to points on the Southeastern than to La Crosse on traffic from Chicago routed via the latter point was in contravention of the long-and-short-haul rule of the fourth section; moreover, it appears that the Burlington had made no application to the Commission for authority to publish such a rate. Complainant seeks reparation on shipments to La Crosse on the basis of the lower rate contemporaneously in effect, but the record contains no proof that complainant was damaged by the maintenance of the lower rate to points on the Southeastern. In the absence of such proof, an incidental contravention of the long-and-short-haul rule of the fourth section over an alternative route does not of itself afford a sufficient basis for an award of reparation.

With respect to shipments of coke originating at Indianapolis, moving subsequent to October 31, 1915, complainant asserts that charges were collected at a combination rate of \$3.15: \$1.30 from Indianapolis to Chicago and \$1.85 thence to destination. The combination based on Kankakee produces a rate 20 cents per ton lower than the combination based on Chicago. However, no allegation of misrouting is made by complainant, nor does the record disclose that the initial carrier erred in not routing the traffic via Kankakee. The office manager of the shipper whose coke originated at Indianapolis was unable to state whether or not any routing instructions were given on past shipments from Indiana. He testified that at the present time he issued no instructions, but made no reference to any specific shipments. While it is the duty of the receiving carrier in

the absence of instructions by the shipper to route via the cheapest reasonable route available, the present record leaves us with no adequate grounds for a finding of misrouting and an award of damages to complainant. Apparently the rates charged and collected were the lawfully published rates of defendants by the route of movement.

In view of the conclusions expressed herein the complaint will be dismissed, and it will be so ordered.

INVESTIGATION AND SUSPENSION DOCKET No. 881.
OHIO RAIL AND LAKE.

Submitted February 26, 1917. Decided April 2, 1917.

Proposed increased rail-and-lake rates from central freight association points
(1) to Lake Superior ports via the Northwestern Steamship Company and
(2) to Lake Huron ports via the Detroit & Cleveland Navigation Company,
found justified.

Ernest L. Ballard for respondents.

Francis W. Sullivan and *G. Roy Hall* for Commercial Club of Duluth.

W. P. Trickett for Minneapolis Traffic Association.

J. H. Beck and *E. H. Berg* for St. Paul Association of Commerce.

Isaac H. Mayer for Great Lakes Transit Corporation.

W. L. Jenks and *W. J. Buchanan* for Northwestern Steamship Company.

REPORT OF THE COMMISSION.

HALL, Chairman:

The tariffs under suspension propose certain changes in rail-and-lake rates from points in central freight association territory (1) to Lake Superior ports via the Port Huron & Duluth Steamship Company, now the Northwestern Steamship Company, and (2) to Lake Huron ports via the Detroit & Cleveland Navigation Company. The investigation originally included certain rates from central freight association points to Canadian ports via the Canada Steamship Lines, Limited, and via the Great Lakes Transportation Company. The orders affecting the rates to Canada were not renewed by the Commission and expired on November 2, 1916. The other rates were suspended by further order until May 2, 1917.

1. INCREASED RATES VIA THE PORT HURON & DULUTH STEAMSHIP COMPANY.

After the close of navigation in 1915 the rates from central freight association territory to Lake Michigan and Lake Superior ports and to St. Paul, Minneapolis, and points taking the same rates, reached by or via the Mutual Transit Company, the Western Transit Company, Erie Boat line, and the Anchor line, were canceled. The only joint rates in effect, therefore, at the opening of navigation in 1916,



were those applying via the Canada Steamship Company or the Great Lakes Transportation Company to Fort William, Port Arthur, Westfort, and Sault Ste. Marie, Ontario, and a limited line of rates from points on the Cincinnati, Hamilton & Dayton Railway and the Toledo & Ohio Central Railway to Lake Superior ports and the twin cities via the Port Huron & Duluth Steamship Company's line.

By tariff, effective April 20, 1916, the respondents canceled the joint rates via the Port Huron & Duluth Steamship Company's route from points on the Cincinnati, Hamilton & Dayton Railway to Sault Ste. Marie, Mich., and the twin cities, and also the rates via the same

route from points on the Toledo & Ohio Central Railway to the twin cities, Duluth, Minn., and Sault Ste. Marie, Mich. In the tariffs under suspension, filed to become effective July 5, July 15, August 1, and August 15, respondents propose to cancel the only remaining joint rail-and-lake rates from central freight association points to Lake Superior ports now carried in connection with the Port Huron & Duluth Steamship Company. These rates apply via Toledo, Ohio, the Detroit & Toledo Shore Line, Detroit, Mich., Grand Trunk Railway, Fort Gratiot, Mich., and Port Huron & Duluth Steamship Company beyond. In support of the proposed cancellation the respondents submit the following:

At the opening of navigation in 1916 the central freight association lines published joint rates with the Great Lakes Transit Corporation only from certain points via which Baltimore rail-and-lake rates applied. From all other central freight association points combinations on Lake Erie ports applied. The accompanying map shows graphically the territory from which the Baltimore basis controls and the territory from which combination rates apply. Rates to Lake Michigan and Lake Superior ports from points west of the line from Cleveland through Akron and New Philadelphia to Wheeling are on the combination basis. From points east of that line the Baltimore rates, wherever they are lower than the combination rates, are applied in order to avoid fourth section violations. The only points from which joint rates are now in effect via the Port Huron & Duluth Steamship Company's line are west of the line above described. Upon the cancellation of these rates combinations on Port Huron will apply. The rates, however, from other points in central freight association territory via the Port Huron & Duluth Steamship Company's line are now based upon combinations of intermediate rates, and this is the basis at present observed via all other routes from central freight association territory to the upper lake ports and the twin cities.

In the table below are shown the present joint rail-and-lake rates and the proposed combination rail-and-lake rates on classes from Cincinnati, Ohio, to Duluth, also the present all-rail rates.

Class rates in cents per 100 pounds.

	1	2	3	4	5	6
Proposed:						
To Port Huron ¹	44.1	37.8	28.4	19.4	16.3	13.7
Beyond	33	27	20	14	12.5	11
Present: Through	77.1	64.8	48.4	33.4	28.8	24.7
	54	46	38	27	22	18
Increase	23.1	18.8	10.4	6.4	6.8	6.7
Present all-rail rates	93.8	77	57.5	40.1	34.4	27.3

¹ Rail and lake traffic moving via Port Huron & Duluth Steamship Company is delivered to that carrier at Fort Gratiot, Mich., which is within the switching limits of Port Huron, Mich.

Respondents' evidence was in the main addressed to showing that the suspended tariffs would restore parity with the rates by other routes. Additional evidence, however, was furnished to establish the reasonableness of the combination rail-and-lake rates from central freight association territory to the northwest.

Upon a consideration of all the evidence, we are of opinion and find that the proposed increased rates have been justified.

2. INCREASED RATES VIA DETROIT & CLEVELAND NAVIGATION COMPANY.

The proposed rail-and-lake rates via Toledo or Cleveland and the Detroit & Cleveland Navigation Company contain one innovation not recognized in the suspended rail-and-lake rates to Lake Superior ports. In connection with this lake line it is proposed to apply the full combination basis from points west of the line shown on the accompanying map, but to establish joint rates from points east of line on the combination basis, observing the all-rail rates less the following differentials as maxima:

Classes-----	1	2	3	4	5	6
Differentials -----	3	3	3	2	1	1

The figures shown are the differentials under the all-rail rates applied by respondents in making rail-and-lake rates to Detroit from a part of the territory east of the line above referred to. From the balance of the territory east of the line the present differentials observed in making rail-and-lake rates to Detroit are:

Classes-----	1	2	3	4	5	6
Differentials -----	2	2	2	1	1	1

The Detroit & Cleveland Navigation Company operates only as far north as Mackinac Island, Mich. Respondents state that the rates to the Lake Huron ports served by this line bear no necessary relation to the rates to the upper lake ports. The respondents, however, have in the past observed the Sault Ste. Marie rates as maxima to Cheboygan, Alpena, and other Lake Huron ports taking the same rates. As a result the rates to Lake Huron ports in connection with the Detroit & Cleveland Navigation Company have been considerably below the combination basis. This is illustrated by the following table, showing the present and proposed rates from Pittsburgh, Pa., to Cheboygan, Mich.:

Class rates in cents per 100 pounds.

	1	2	3	4	5	6
All-rail rates.....	66.2	57.2	44.1	31	26.3	22.1
Differentials.....	3	3	3	2	1	1
All-rail rates less differentials.....	63.2	54.2	41.1	29	25.3	21.1
Local to Cleveland.....	28.9	25.2	21	13.7	10.5	8.9
Local rate beyond.....	37	32	23	17	14	12
Combination.....	65.9	57.2	44	30.7	24.5	20.9
Proposed.....	63.2	54.2	41.1	29	24.5	20.9
Present.....	54	46	35	27	22	18
Increase.....	9.2	8.2	3.1	2	2.5	2.9

While respondents argue generally that combination on Lake Erie ports is the only proper basis for rail-and-lake rates from central freight association territory they also submit comparisons with all-rail rates to show the reasonableness of the rates under suspension. In this connection they emphasize the low scale of rail rates prevailing in this territory.

Upon a consideration of this and other evidence of record we are of opinion and find that the proposed increased rates have been justified.

It appears that the port to port rates of the Detroit & Cleveland Navigation Company are not on file with the Commission and respondents have not published rail-and-lake rates in connection with this carrier from points west of the line shown on the accompanying map. At the hearing, however, respondents stated their willingness to publish these rates on the combination basis. This they should promptly do to maintain the present through route. The orders of suspension entered herein will be vacated.

INVESTIGATION AND SUSPENSION DOCKET No. 870.
SOUTHEASTERN COTTON GOODS.

Submitted December 19, 1916. Decided April 2, 1917.

Proposed increased joint rates, any quantity, on cotton factory and knitting factory products from southeastern points to points in central freight association territory, other than to Chicago and Chicago rate territory and the establishment of carload rates to Chicago, found not to have been justified and the tariffs under suspension required to be canceled.

M. B. Pierce, Edward H. Hart, Willis H. Fowle, J. M. Dewberry, and Edward D. Mohr for respondents.

William A. Wimbish, Geo. W. Forrester, D. F. Hurd, John McNally, E. L. Tragesser, H. G. Wilson, Geo. F. Hichborn, Stanton Pierce, and R. G. Krietter for protestants.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

In this proceeding the respondents propose rates on cotton factory and knitting factory products from the southeast to points in central freight association territory, increased by amounts varying from 1 to 9.5 cents per 100 pounds. The rates involved are joint through rates and not combinations on the Ohio River. They are stated in cents per 100 pounds in this report and, except where otherwise specified, are any-quantity rates.

Cotton piece goods, as the products involved are generally designated in southern classification, are rated fourth class; in official classification, rule 25; in western classification, first class; but in the latter by exceptions to the classification the larger part of the movement has been for nearly 30 years under a third-class rating. Both in southern and western classification territories many commodity rates on these articles are published which are less than the class basis. What the class rating in official classification was prior to 1887 is uncertain. It appears, however, that on shipments from the southeast to Chicago the fourth-class official classification rating was applied, resulting at that time in a rate of 17 cents from Cincinnati to Chicago. Some time after 1887, at a date not shown of record, the cotton piece goods proportional rate from Cincinnati and other Ohio River crossings to Chicago was made 20 cents. The same rate was applied to Chicago rate territory and other points in Illinois as far south as Litchfield and points in eastern Illinois and northwestern

Indiana as far east as Shelby, Ind., and in Michigan as far north as Benton Harbor. To Milwaukee these rates from the southeast were and are fixed differentials over the Chicago rates. The contention is made by respondents that the rates to Chicago and Chicago rate points are now controlled by the Illinois Central Railroad and were originally instituted by that road and the Chicago & Eastern Illinois Railway. The facts that a rate of 17 cents from Cincinnati to Chicago was maintained by carriers other than the two last named; that neither of these roads ever served Cincinnati; and that this 17-cent rate was increased to 20 cents, which is now the rate via any line from all Ohio River crossings to Chicago rate territory, hardly support so broad a contention. This 20-cent proportional rate from Cincinnati, Ohio, was extended to Detroit, Mich., January, 1904; to Cleveland, Ohio, July, 1904; to Fort Wayne, Ind., January, 1908; and to Toledo, Ohio, April, 1908. The extension to Toledo, that point being intermediate to Detroit, was made first by the Baltimore & Ohio Southwestern Railroad. Akron, Ohio, being intermediate to Cleveland, also received the same rate. The 20-cent proportional rate was canceled in 1911, and since that time joint through rates have been built upon a 20-cent factor north of the river and the proportional rates of the lines south of the Ohio River.

Except to Chicago rate territory and to Detroit, Cleveland, Toledo, Fort Wayne, and Akron, the through rates on cotton piece goods from the southeast were made, prior to our decision in *The Five Per Cent Case*, 32 I. C. C., 825, by the addition of the proportional rates of the southern lines and the full locals of the northern lines. The joint through rates to the cities mentioned above seem to have been accorded partly because of the volume of movement thereto and partly because of insistent demands by shippers in these cities. As the local rates were not separately published as parts of through rates the 5 per cent increase authorized in *The Five Per Cent Case*, *supra*, did not affect those joint rates to the points where the 20-cent rate was a factor. Nor was an increase made to the points where the local rates from the Ohio River were factors. In that case, however, we said:

Joint rates between official classification territory, on the one hand, and southeastern territory, the southwest, and points on or east of the Missouri River on the other, may be increased not to exceed 5 per cent of the division of the rate accruing to the carriers in official classification territory.

This permission, granted December 16, 1914, the carriers did not seek to avail themselves of prior to the filing of the tariffs suspended in this proceeding. These tariffs were published to become effective July 1, 1916, and propose to continue to Chicago the present any-quantity rate of 55 cents as a less-than-carload rate, and to establish

to this point a carload rate of 52 cents. To five points, viz, Detroit, Cleveland, Toledo, Fort Wayne, and Akron, the factor of 20 cents accruing from the joint rates to lines north of the river is raised to the basis of 15 per cent less than the second-class rates as increased under *The Five Per Cent Case*; and, to other points in central freight association territory, the increase is 5 per cent of the factor applicable, that is, rule 25, north of the river. Upon protests of the Goodyear Tire & Rubber Company, B. F. Goodrich Company, Kelly-Springfield Tire Company, and the American Rubber and Tire Company, of Akron, Ohio; the Toledo, Ohio, Commerce Club; the Ford Motor Company, of Detroit, Mich.; Bibb Manufacturing Company, of Macon, Ga.; the Cotton Manufacturers' Association of South Carolina; C. W. Cheers, representing certain textile mills in the state of Georgia, and a number of others, these tariffs were suspended to October 29, 1916, and later to April 29, 1917.

Cotton piece goods manufactured in the southeast are sold in Chicago rate territory and the territory to which the increased rates are here proposed in competition with similar goods manufactured in New England, New York, and New Jersey. Manufacturers in Chicago and Chicago rate territory actively compete with similar manufacturers in the five localities now enjoying joint through rates made by the addition of 20 cents to the factor south of the Ohio River; and to some extent compete with that part of central freight association territory to which through rates are made by the application of the local rates north of the river. Many of these manufacturers in each of the territories to which the three systems of rate making are proposed use for further manufacture cotton piece goods purchased in the southeast and sell their products in the same markets. While no increases in the rates to trunk line territory are proposed the record is silent on the question of competition between this territory and the points to which it is here proposed to increase rates. The transportation conditions from the Ohio River to Chicago, and other points, taking the Chicago basis of rates on cotton piece goods from the southeast, are not substantially different from those to the five cities now enjoying the 20-cent factor north of the river; nor, except in volume of traffic, is there any substantial difference between these five points and the territory not now accorded the lower rate basis. The principal cotton piece goods shipped under the rates proposed to be increased are woven cotton fabrics known as duck, used in the manufacture of automobile tires, fire hose, rubber belting, and other mechanical rubber goods. Sheeting, denims, canton flannels, cotton yarns, and twines are also shipped, fully 95 per cent of all shipments from the southeast being of goods that are subjected by the purchasers to further manufacture. Denims are used in the manufac-

ture of overalls. Yarns are used in the manufacture of hose, bags, tents, awnings, nets, and other articles. Twine is used for some of the purposes for which yarn is used and for tying packages and sewing bags. The value of these cotton piece goods ranges from 20 to 30 cents per pound. All these fabrics are shipped in compact packages, carefully wrapped, and no special equipment is necessary in their transportation. All that is needed is the ordinary box car, clean and free from leakage.

The loss and damage claims are nominal. On shipments of over 4,000,000 pounds, upon which freight charges accrued of approximately \$24,000, one manufacturer had only one claim, which amounted to \$56.87. Another manufacturer has made no claims. The experience of the Southern Railway, as shown by a letter from its superintendent of agencies, shows that the loss and damage claims paid by that road on this traffic were, in 1914, 0.9 of 1 per cent and, in 1915, 0.69 of 1 per cent of the revenue received from the entire cotton goods traffic, the revenue for the two years being approximately \$4,000,000. It was not shown that any loss or damage occurred to shipments moving in carload quantities.

The volume of the business shipped under the rates involved has increased rapidly. One Georgia manufacturing company began to use the rate to the central freight association territory in 1908, and its shipments for that and the years following are as follows: 1908, 21,203 pounds; 1909, 89,000 pounds; 1910, 179,300 pounds; 1911, 543,400 pounds; 1912, 1,200,000 pounds; 1913, 1,950,000 pounds; 1914, 2,206,000 pounds; 1915, 3,790,000 pounds.

This mill, like others in the southeast, had to overcome the skepticism of the trade as to its product before it could compete with the eastern mills for business in this territory. The total shipments under the rates to points other than to Chicago rate territory from Georgia and the Carolinas now approximate 50,000,000 pounds annually.

Large quantities of grain, meat, and other western products are shipped into the southeast via the Ohio River crossings, so that there are numerous cars in the southeast which must move back to the Ohio River empty. The cotton piece goods traffic lessens the empty return haul.

One manufacturer shipped for the year ending June 30, 1916, under the rates proposed to be increased, from its mills at Columbus, Ga., 3,789,928 pounds of cotton factory products. Of these shipments 174 moved as car lots with an average load of 19,500 pounds, and 153 moved as less-than-carload shipments with an average load of 11,580 pounds. The shipments moving in carload quantities were loaded by the consignor, the car being thereupon sealed and moved through to the consignee without any change in the load.

Manufacturers would increase their shipments in carloads if there were a carload rating lower than on shipments in less than carloads. A purchaser of these goods at Akron buying in the east and the south, and using annually 20,000,000 pounds, ships 90 per cent thereof in car-lot quantities, with an average loading of 27,189 pounds. One of the respondents in seeking to convince the other respondents that they should agree to the establishment of a carload rating to Chicago argued that such a rating would increase the movement in through cars which would not have to be touched, saving transfer charges and the expense of unloading at freight houses. From both a transportation and a commercial standpoint a carload rating seems feasible, and "economy of operation is promoted by heavier loading, and the whole public benefits by economies that reduce the cost of transportation." *1915 Western Rate Advance Case*, 35 I. C. C., 497, 575.

One of the special costs urged by respondents as incident to this traffic is a transfer charge at the Ohio River. This charge does apply on some shipments, but does not apply generally on those which move through without transfer from the car in which the shipments originate.

Macon, Ga., may be taken as fairly representative of the southeastern points. Using that as the point of origin, the distances, the present and the proposed rates, and the revenue per ton-mile therefrom appear from the subjoined table.

Cotton piece goods, any quantity.

From Macon, Ga., to—	Distance	Present rate.	Per ton per mile.	Proposed rate.	Per ton per mile.
	Miles.	Cents.	Miles.	Cents.	Miles.
.....	573	49	17.1		
.....	635			1 52	12.5
.....		55	12.2		
.....	633	59	12.7		
.....	741	55	14.6	61.4	14.6
.....	790	61	15.1	62.7	14.5
.....	896	55	12.2	64.5	14.4
.....	924	64	15.2	64.2	14.7
.....	776	55	14.2	61.4	14.9
.....	761	66.5	14.5	61.4	14.7
.....	791	63	15.7	62.6	14.3
.....	820	55	12.4	62.6	14.5
.....	826	63	15.2	62.6	14.7
.....	796	62	14.6	62.6	14.6
.....	823	55	12.4	62.6	14.5
.....	878	64	14.7	64.2	14.9
.....	889	66	14.9	67.6	14.9

1 Proposed carload rate.

These through rates are made by using the uniform factor 35 cents to the Ohio River and adding thereto the rule 25 rates north of the river. The local rate on cotton piece goods from Macon to the Ohio River is 49 cents; the fourth-class rate to Cincinnati or Louisville is

43 I. C. C.

68 cents. The southern lines' factor south of the river, therefore, is about 72 per cent of their local and little more than 50 per cent of the regular class basis. The respondents north of the river seek here to add to this factor south of the river their full locals. It also appears that the per ton-mile revenue computed on the southern factor of 35 cents is less than from the present northern factor of 20 cents. Rates from Macon contrasted with rates from New England points to the same general destinations show that even the present rates, distance considered, are higher than from New England. The distance from Boston, Mass., to Detroit is given as 750 miles; the rate for this haul is 45.3 cents, and the revenue per ton-mile is 12.08 mills. From Macon to Fort Wayne is 741 miles, the present rate 55 cents with a revenue per ton-mile of 14.8 mills, while the proposed rate of 61.4 cents would yield 16.6 mills. The present factor of 20 cents from the Ohio River to the five points to which that basis is applied yields to the carriers north of the river higher revenue per ton-mile than is yielded by the rates from New England and New Jersey. While the distances from the Ohio River are shorter than the distances from New England and New Jersey, as the 20-cent factor is but a part of a through rate for a distance greater than that from these eastern points, the comparison is not without significance.

In *Bancroft & Sons Co. v. N. Y., N. H. & H. R. R. Co.*, 40 I. C. C., 411, 417, we held that a rate for 316 miles to Philadelphia, Pa., from Fall River, Mass., should not exceed 24 cents. This rate yields a revenue per ton-mile of 15.2 mills, which is less than the yield from the present 20-cent basis from the Ohio River to Akron.

The rates from South Carolina are based on a factor of 45 cents south of the river instead of 35 cents, as is the case from Georgia points. These South Carolina rates may be fairly illustrated by using Laurens, S. C., as a point of origin and Cleveland and Toledo as destination points.

	To Cleve- land, Ohio.	To Toledo, Ohio.
Distance from Laurens, S. C., via—		
C., C. & O.....miles..	701	704
Q. & C.....do....	808	747
Distance from Laurens, S. C., to Cincinnati, Ohio.....do....	546	546
Distance north of Cincinnati, Ohio.....do....	245	201
Rate to Cincinnati, Ohio.....cents..	45	45
Present rate north of Cincinnati, Ohio.....do....	20	20
Present through rate.....do....	65	65
Proposed through rate.....do....	73.6	71.4
Amount of advance in through rate.....do....	8.6	6.4
Percentage of advance in through rate.....do....	13.2	9.8
Per ton-mile to Cincinnati, Ohio.....mills..	16.5	16.5
Per ton-mile north of Cincinnati, Ohio.....do....	16.3	20
Per ton-mile through rate via Cincinnati, Ohio.....do....	16.4	17.4
Proposed rate north of Cincinnati, Ohio.....cents..	28.6	28.4
Proposed per ton-mile north of Cincinnati, Ohio.....mills..	23.3	28.3
Percentage increase north of Cincinnati, Ohio.....do....	43	32

The 20-cent factor seems to have been adopted because that is the proportion which the respondents with lines from the western termini of trunk lines to Chicago receive for that haul on shipments of cotton piece goods from New England points.

Respondents rely on what we said in *The Five Per Cent Case*, *supra*, quoted above and the fact that the proposed rates are the same as would result from the use of their local rates applied to the classification basis of 15 per cent less than second class. Neither nor both of these furnish a justification. A classification rating might be just as a basis for less-than-carload rates without being proper for an any-quantity rate. In *1915 Western Rate Advance Case*, *supra*, we said:

The rates in this territory are any-quantity rates and can not be considered less-than-carload rates.

So long as respondents choose to publish, with the exception specified, only any-quantity rates they can not forcibly urge as a justification for an increase in rates on traffic that does and can move in carload quantities by arguing that such increased rates are reasonable on less-than-carload shipments.

From all the facts of record we are of opinion and find that respondents have not justified the reasonableness of the proposed rates.

In passing upon the propriety of proposed increased rates, the Commission may properly inquire whether such rates are free from unjust discrimination. The facts showing discrimination in this instance are all of record. The transportation conditions in the Chicago rate territory are substantially similar to those existing in the territory to which respondents propose to increase the rates here protested. Competition between the two territories was shown to exist. No warrant appears for confining carload rates to but one destination. The undisputed facts show the elements necessary to constitute a violation of section 3 of the act.

We are of opinion and find from all the facts of record that the proposal to publish lower carload rates to Chicago and the failure to increase the rates to Chicago and Chicago rate territory while increasing them to competitive points would constitute undue prejudice and disadvantage to the points not included in Chicago rate territory. The proposed increased rates have not been shown to be just and reasonable, and the proposed carload rates to Chicago are unlawful in that they unduly prefer that locality to the prejudice and disadvantage of the points to which no carload rates are proposed. An order will issue requiring cancellation.

No. 9130.
PADUCAH BOARD OF TRADE ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted January 5, 1917. Decided April 2, 1917.

Upon the facts of record and following the principles applied in *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583, and *Paducah Board of Trade v. I. C. R. R. Co.*, 37 I. C. C., 719, rates from points or groups in Arkansas and Louisiana to Paducah, Ky., on lumber commodities now accorded lumber rates from those Arkansas and Louisiana points to Cairo, Ill., found unreasonable and defendants required to establish joint rates thereon to Paducah via either Cairo or Memphis, Tenn., not in excess of the present rates on like commodities from the same points or groups to Cairo. Reparation awarded to Paducah Cooperage Company.

J. V. Norman for complainants.

J. D. Watson for Louisiana & Arkansas Railway, St. Louis Southwestern Railway Company, and St. Louis Southwestern Railway Company of Texas.

J. E. Johanson for Chicago, Rock Island & Pacific Railway Company and its receiver.

W. F. Dickinson, Daniel Upthegrove, Henry G. Herbel, and Fred G. Wright for all defendants.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This proceeding, filed August 14, 1916, by the Paducah Board of Trade and the Paducah Cooperage Company, brings in issue defendants' rates to Paducah, Ky., on various lumber commodities specified in the complaint from points or groups in Arkansas and Louisiana west of the Mississippi River on and south of the Chicago, Rock Island & Pacific Railway from Memphis, Tenn., to Little Rock, Ark., including Des Arc, Ark. It is alleged that to the extent the rates exceed the rates contemporaneously maintained on the same commodities from the same points or groups to Cairo, Ill., they are unreasonable and unduly discriminatory to the disadvantage of Paducah and to the preference and advantage of Cairo. We are asked to establish through routes and joint rates on these commodities from the points or groups of origin stated to Paducah via Memphis, such rates not to exceed the rates from the same points con-

temporarily maintained for the transportation of like commodities to Cairo or for the transportation of logs and lumber to Paducah. The Paducah Cooperage Company is a corporation doing business at Paducah, and reparation is asked by this complainant on all shipments of staves, heading, and other cooperage stock made by it under the rates complained of within two years prior to the filing of the complaint or that may be made during the pendency of this proceeding. This claim, however, was modified upon the hearing to exclude shipments which moved prior to February 8, 1915.

In *Paducah Board of Trade v. I. C. R. R. Co.*, 29 I. C. C., 583, and *Paducah Board of Trade v. I. C. R. R. Co.*, 37 I. C. C., 719, hereinafter referred to respectively as the first and second Paducah cases, we considered complaints respecting defendants' rates on logs and lumber from this producing territory to Paducah, in which substantially the same issues were involved as those here presented. In the first Paducah case we found that the rates complained of were unjustly discriminatory as compared with the rates to Cairo and that the defendants which operated west of the Mississippi River should maintain rates on logs and lumber to Paducah from substantially equidistant points or groups in that producing territory no higher than they contemporaneously maintained from the same points to Cairo. The complaint, however, contained no request for the establishment of through routes and joint rates and no order was entered. The second Paducah case was thereupon filed and that complaint specifically included a prayer for the establishment of such through routes and joint rates, and we there approved our findings in the first Paducah case and again found that the rates complained of were unjustly discriminatory to the prejudice and disadvantage of Paducah and to the preference and advantage of Cairo. We further found that the rates were unreasonable to the extent they exceeded the then existing rates on logs and lumber to Cairo and required defendants to establish and maintain through routes for the transportation of those commodities from the points or groups involved to Paducah and joint rates applicable via such routes no higher than the rates then maintained from the same points or groups to Cairo. Those routes and rates the defendants were given the alternative of establishing via either Memphis or Cairo. An order was entered in that proceeding giving effect to those findings and subsequently a petition for rehearing, filed by defendants, was considered and denied. Some of the initial lines thereupon published rates to Paducah the same as to Cairo, not only on logs and lumber but on all articles carried in their lumber lists, though the west side lines generally did not concur in those rates, and they were made to apply only via southern crossings in connection with

the east side lines. Certain of the west side lines sought an injunction against our order in the United States district court for the western district of Kentucky, which was denied. *St. Louis Southwestern Ry. Co. v. United States*, 234 Fed., 668. Those carriers thereupon established the Cairo basis of rates to Paducah on logs and lumber.

Complainants now allege that defendants' tariffs carrying their lumber rates which were under review in the two cases referred to, and their lumber tariffs generally, have provided and now provide for the application of the lumber rate to these various commodities; that the rates on the commodities here involved, while not specifically included in the former complaints or findings of the Commission, were in reality involved, but that in publishing the rates required under our order in the second case defendants disregarded this order and restricted the application of the rates to logs and lumber and did not provide for their application to these lumber commodities, leaving the rates on the commodities named higher by from 2 to 6 cents than the rates contemporaneously maintained on the same commodities to Cairo and likewise higher than the rates on lumber to Paducah, published under our order referred to.

In addition to these various proceedings it may be observed that, following our report in the first Paducah case, the Chicago, Rock Island & Pacific Railway filed a tariff proposing increases in the rates on logs and lumber to Cairo and naming the same rates to Paducah. That tariff was suspended and the rates proposed, together with the rates proposed by other carriers which were in conflict with our findings in the first Paducah case, were considered in *Rates on Lumber from Southern Points*, 34 I. C. C., 652, and we there again adhered to our findings in the first Paducah case. It would seem therefore that the principles involved, with respect to logs and lumber, had received full and mature consideration not only with respect to the reasonableness *per se* of the rates but with respect to the proper relationship which should obtain as between Cairo and Paducah; and the only question here presented is whether the application of the principles established in those proceedings with respect to logs and lumber entitles the complainant upon this record to the application of like principles to the lumber commodities here involved. It is a fair deduction from correspondence with certain of defendants, appearing in the record, that, following our order in the second Paducah case, the lumber rates to Paducah would have been extended to these commodities had the defendants not considered that such action would prejudice the proceeding which had been instituted by them in the federal court. Moreover, the present record shows that, subject to certain qualifications of their testimony hereinafter referred

to, defendants now admit that the controlling principles involved in these Paducah cases, if properly applied to logs and lumber, should equally govern the disposition of the issues here presented. Their chief effort here, therefore, is to show that the Commission erred in its findings in the former cases, and they now proceed as if the present case "were one of first impression." An examination of their present testimony shows, however, that, in so far as this bears upon the issues heretofore considered, it is substantially only a reproduction of their testimony in the former proceedings supplemented by discussion and argument.

At the outset it is asserted that the delegation by Congress to this Commission of authority to establish through routes and joint rates between carriers engaged in interstate commerce is violative of the fifth amendment to the federal constitution. The defendants' views appear to be predicated upon the theory that the establishment by this Commission of through routes and joint rates creates an involuntary partnership between participating carriers, thereby subjecting such carriers to liabilities not of their own choosing. We have heretofore found similar contentions to be without merit and the subject need not be discussed here. See *Black & White River Transportation Co. v. M. P. Ry. Co.*, 37 I. C. C., 244. It may be observed, however, that no carriers would participate under the joint rates asked, other than those which by the voluntary action of the various defendants have heretofore participated and now participate in the through movement of this traffic to Paducah, and no claim is made that the relief asked would entail risk or loss upon any of the defendants by reason of the insolvency or lack of responsibility of other defendants, such a contention on the contrary being expressly disclaimed.

In our reports in the former Paducah cases we observed that in reaching Paducah via Thebes, it is necessary to cross both the Mississippi River and the Ohio River, while only the former must be crossed if the Memphis route is used. We also called attention to the constructive mileage generally claimed by the carriers by reason of the use of the bridge across the Ohio River at Cairo. Defendants now say:

While it may be proper to consider it in determining what is a reasonable rate, that constructive mileage certainly can not be taken into consideration in determining whether the Cairo route is unreasonably long.

We are unable to subscribe to the doctrine that carriers may observe and disregard constructive mileage at their pleasure. If such mileage is reflected in their rates applicable over a route necessitating the use of a bridge, it may not then be disregarded in ascertaining the mileage of that route.

It was stated in the report that—

Defendants lay some emphasis on the fact that Cairo is a natural "rate-breaking" point, and that rates from the southwest to points north and east of Cairo are almost invariably made by the combination on Cairo, the inference being that the Paducah rates should be similarly constructed.

It is now testified for the Chicago, Rock Island & Pacific that this defendant does not contend that the Cairo route is the logical or natural route to Paducah; that it does contend, however, that the logical and natural route to Cairo is not through Memphis, and that the logical route for the Rock Island to Paducah is through Memphis; also that the rates to Paducah and Cairo should be made on Memphis combination, and the only reason this carrier's rates to those points are not so made is because of the competitive Cairo rate. But we found in the previous reports that the natural route to Paducah was via Memphis, and the underlying basis of the argument here is merely that the rate to Cairo is unduly low and nothing is there shown to cause us to adopt views as to that rate differing from those set forth in our previous report.

In the former report, quoting from pages 671 and 672 of our report in *Rates on Lumber from Southern Points, supra*, we directed attention to the fact that it there appeared that in the transportation of yellow pine from the southern blanket to Cairo proper the movement was generally over the lines of two or more carriers and only a relatively small number of cars moved over a single line. The defendants now seek to dispute the correctness or significance of such facts by reference to a table containing other comparisons on the subject, produced elsewhere in the report in the last-named proceeding. It is to be observed, however, that this table has reference only to the movement of hardwood, and while the greater portion of the cars there referred to moved over a single line, a very considerable number nevertheless moved over the lines of more than one carrier; and the conspicuous fact remains that, generally speaking, the defendants for many years have voluntarily applied the same rates to this traffic, regardless of the number of lines participating in the haul.

The rates from Memphis and from a number of Arkansas points to Henderson, Owensboro, and Louisville, Ky., are but slightly in excess of the rates maintained to Paducah prior to the reduction required in those rates, and defendants argue that if it is proper that Paducah should have the Cairo basis, the relation between Paducah and these other Kentucky points would require a reduction in the rates to those points. Only the rates to Paducah, however, are here under consideration and Paducah may not be denied a proper basis of rates because it is apprehended that a change in other rates may subsequently be found necessary or advisable.

Complainants have tendered a copy of the transcript in the second Paducah case and objection to its admissibility was made by defendants upon the hearing and is renewed in their brief. The grounds of this objection are that no copy was furnished to defendants as required by rule 13 of the Commission's Rules of Practice. The defendants are the same in both proceedings, and complainants contend that because of the failure of the defendants to obey our order, as alleged, the Commission, in the exercise of its discretion, should not exact a literal compliance with the rule. However, by express provision of the act it was contemplated that this Commission make rules of practice, and compliance with the rules is in the interest of justice to all parties. The exhibit in question will not be considered as filed in evidence.

As explanatory of the rate basis observed, what was said in the former cases with respect to logs and lumber is also applicable here, namely, that most of the traffic from the lumber-producing territory west of the river to Paducah is handled through Cairo, and the Paducah rates are made by combination on Cairo, the rate from Cairo to Paducah being 6 cents per 100 pounds; however, when the Memphis combination is lower, the difference between the rates to Cairo and to Paducah varies from 2 to 6 cents. The commodity descriptions observed in the tariffs publishing the rates on these various lumber commodities to Cairo varies somewhat from the descriptions observed in the tariffs publishing the rates from Cairo to Paducah. For illustration, in the former rates are published on staves, while in the latter the rate on staves is included under the item of barrel material. There are in excess of 40 different commodities enumerated in the complaint, which, however, includes many of the commodity descriptions found in the respective tariff publications noted. In the tariffs publishing the rates to Cairo approximately 30 different commodities are enumerated to which lumber rates are and for some time have been applicable. Defendants say that they do not have a uniform description of lumber and articles taking the same rates from the producing territory in question to interstate points and other lists apply to other territory, such as Texas, seaboard territory, and points east of the Indiana-Illinois state line, etc. However, because there is a variance in the list of articles accorded lumber rates in different territories is no reason why the lumber rates should be denied all such commodities to Paducah. The same list which governs to Cairo governs to points such as Evansville, Ind., Henderson and Louisville, and Cincinnati, Ohio, and it furthermore appears from defendants' testimony that they would not object to applying to Paducah the same lumber list as to Cairo, "provided the rates to Paducah on lumber could be adjusted on some reasonable basis as related to the other Ohio River crossings

east of Paducah where this description is carried." It therefore is patent that defendants' refusal to extend the lumber rate to these commodities to Paducah is attributable solely to their dissatisfaction with the lumber rates which we have required to Paducah.

The record does not affirmatively establish that all of these commodities here under consideration move to Paducah, nor that there is any considerable movement to that point of any of them. Only a limited number are manufactured at Paducah. Defendants testify that staves move from approximately only one-tenth the number of points from which lumber moves, and apparently none of the commodities move from all the lumber-producing points. These matters, in the view of defendants, constitute a bar to complainants' right to the relief prayed, but we can not agree that such considerations in any way justify the defendants in failing to maintain a reasonable basis of rates to Paducah applicable to this traffic. Complainants testify that, due to the lower rates to Cairo, manufacturing industries have moved from Paducah to that point; that Paducah's growth and development have been and are thus retarded; and that there is a necessity and demand for a reasonable basis of rates on the commodities in question to Paducah from points generally in the southern territory referred to.

Restricting the scope of our finding to those lumber commodities to which defendants now accord the lumber rates to Cairo from the points of origin stated, we are of the opinion and find that defendants' rates from the points or groups in question to Paducah are unreasonable to the extent that they exceed the present rates on like commodities from these same points or groups to Cairo, which rates we find would be reasonable rates to Paducah; that defendants should establish through routes to Paducah on those commodities from these respective points or groups, and joint rates applicable via such through routes, no higher than the present rates applicable thereon from the same points or groups to Cairo. These through routes and rates may be established via either Memphis or Cairo, and it should be clearly understood that while the natural route from these producing points is via Memphis and complainants have asked for the establishment of the routes and rates via Memphis, nevertheless complainants are primarily interested in securing reasonable rates and the alternative afforded defendants under these findings, of establishing the routes and rates via Cairo in lieu of Memphis, if they so desire, is solely for the convenience of defendants. We further find that in so far as the Paducah Cooperage Company has paid and borne freight charges upon the basis herein found to be unreasonable, it has been damaged to the extent that such charges exceeded what would have been collected on the basis herein found reasonable,

and is entitled to reparation accordingly on shipments which have moved subsequently to February 8, 1915. This complainant should prepare a statement showing the details of any shipments upon which reparation is claimed, in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

The question of discrimination, due to the relative bases of rates formerly maintained on logs and lumber from this southwestern territory to Cairo and Paducah, was considered at length in the former proceedings. A general investigation by the Commission is now pending respecting the rates on and the classification of lumber and lumber products. In view of that investigation we deem it unnecessary to give further consideration upon this record to the claims of discrimination herein presented.

An appropriate order will be entered.

43 I. C. C.

No. 9097.

NORTHERN POTATO TRAFFIC ASSOCIATION

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS Nos.
1564, 1625, 1787, 2060, 3786, AND 4326.

Submitted March 9, 1917. Decided April 2, 1917.

1. Reasonable carload minima prescribed for shipments of potatoes from points in the state of Minnesota to points in official classification territory east of the Indiana-Illinois state line.
2. Defendants denied authority to continue charging from points in central freight association and trunk line territories to points in Minnesota a greater compensation as a through route than the aggregate of the intermediate rates on shipments of returned stoves and linings.

O. W. Tong for complainant.

D. P. Connell for official classification lines.

John F. Finerty and *L. R. Capron* for Great Northern Railway Company and Northern Pacific Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The complaint in this case, filed by Northern Potato Traffic Association, a voluntary association of potato shippers, involves certain charges, rules, regulations, and practices relating to the shipment of potatoes from Princeton, North Branch, Zimmerman, and certain other points in the state of Minnesota to numerous points in official classification territory east of the Indiana-Illinois state line. The complainant alleges that the carload minima applicable to such shipments are unjust and unreasonable; that the failure to provide for free return of stoves and linings necessary to the protection of such shipments is unjust and unreasonable; and that the free return of stoves and linings on shipments to Chicago while at the same time charges are made for such return when shipments move beyond Chicago results in higher charges for the through route than the aggregate of the intermediate rates.

Carload shipments of potatoes from and to the points stated are governed by the official classification. Prior to February 10, 1902, this

classification provided a carload minimum of 24,000 pounds, except that during a short period a minimum of 20,000 pounds applied on cars under 30 feet in length. On February 10, 1902, the minimum was increased to 30,000 pounds, at which point it remained until September 1, 1914, when, by exceptions to the classification, it was increased to 38,000 pounds. Effective December 1, 1914, the classification provided a minimum of 36,000 pounds, except for the months of June, July, August, and September, during which months a minimum of 30,000 pounds applied. These minima, which are not graduated according to the size of the cars, are the minima now in force and here assailed. Complainant asks that the summer minimum of 30,000 pounds be applied in May and October, and that a 30,000-pound minimum be applied at all times to cars equipped with non-collapsible end ice bunkers that have an outside measurement of 36 feet and under, and on all cars of an inside measurement of 31 feet and under. By exceptions to the western classification, carriers operating in western trunk line territory provide a 36,000-pound minimum from October 1 to May 31, one of 30,000 pounds for the other months, and the minimum for all months is 30,000 pounds "on shipments in cars under 31 feet in length, inside measurement, or in cars 36 feet and under, outside measurement, when equipped with non-collapsible end ice bunkers."

There is no difficulty in loading standard cars to 36,000 pounds. The smaller cars can not during the winter, when stoves and lining are necessary, be loaded to 36,000 pounds.

Some shippers do not object to the maintenance by defendants of the same minimum weights as those which apply in western trunk line territory which were established after an agreement between shippers and carriers. *Potato Carload Minimum Weights*, Investigation and Suspension Docket No. 215, unreported. Two shipments of 36,000 pounds each made during the first half of October were shown to have been seriously damaged. These shipments were in 31-foot cars, and were unusually delayed in transit. Over 2,000 cars shipped from points in Michigan to points in central freight association territory during May, June, August, September, and October, 1915, and May and June, 1916, were loaded to an average of 37,684 pounds. The record is silent as to the size of the cars in which these shipments were made. It does appear, however, that the cars used in this territory are usually 36 feet and over in length.

The burden to justify the increase in the minimum is on the defendants. No justification was presented of a 36,000-pound minimum on the smaller cars. These it is not possible safely to load to 36,000 pounds, and the greater number of cars furnished to the members of the complaining association are of the smaller sizes.

The necessity of lining and heating cars in which potatoes are shipped in winter is well known, and we have had frequent occasion to describe the methods employed for this purpose. In the western trunk line territory the carriers return to the point of origin linings and stoves so used without charges other than those included in the rates on the shipments of potatoes. *Protection of Potato Shipments in Winter*, 26 I. C. C., 681, 682. This so-called free return of stoves and linings is applied at a few local points in central freight association territory and on shipments moving from Minnesota to the southeast through Cincinnati, Ohio. Generally no such regulation is applied in official classification territory and, so far as this record shows, was never applied on the traffic here involved. A few of the lines in this territory return lined empty cars which are kept in the service of transporting potatoes. Competition of carriers requires that the movement to the southeast through Cincinnati must be on rates and regulations equally liberal with those through Cairo, Ill., to the same points. The rates from Minnesota were increased 5 per cent following the 5 per cent increase within central freight association territory. The rates on potatoes from Minnesota points to St. Louis, Mo., are lower than some rates from the same points to points in central freight association territory for similar distances. Potatoes are rated fifth class in official classification. The rates applicable to the shipments here involved are joint through commodity rates less than fifth class. Potato growers in official classification territory shipping to points therein in competition with complainant do not obtain a free return of their heaters and linings.

Shipments locally to Chicago from Minnesota are made on rates which include the return without extra charge of heaters and linings. When such shipments are made to points east of Chicago rate territory through charges are exacted for the return of the heaters and linings. This results in charging "greater compensation as a through route than the aggregate of the intermediate rates," in contravention of the rule of section 4 of the act. Two of the western carriers are willing to remove these departures by providing for the movement west of Chicago, return of such instrumentalities without other charge than the rate to Chicago. These departures from the rule of the fourth section are protected by applications as follows: No. 1564, filed by the Baltimore & Ohio Railroad Company; No. 1625, filed by C. C. McCain, agent; No. 1787, filed by Erie Railroad Company; No. 2060, filed by J. F. Tucker, agent; No. 3786, filed by Chicago & North Western Railway Company; and No. 4326, filed by Chicago, St. Paul, Minneapolis & Omaha Railway Company.

Those portions of these applications by which authority is sought to continue to charge for the transportation of stoves and linings,

used in connection with the transportation of carload shipments of potatoes in the reverse direction, from points in trunk line and central freight association territories to points in Minnesota, described in the complaint, rates which are higher as a through route than the aggregate of the intermediate rates, were set for hearing with this complaint. No attempt was made to justify the departures referred to.

As stated, the minimum weight now in effect is 36,000 pounds, except for the months of June, July, August, and September, during which it is 30,000 pounds. These minimum weights not being graduated according to the size of the car used or ordered, apply to cars of all sizes. It is a matter of common knowledge that during the principal shipping season in this producing territory, as in many others producing the same or similar commodities, it is difficult, if not impossible, for the shippers to secure all of the refrigerator or insulated cars that they desire. Every car, large or small, is in demand and eagerly sought. These shipments of potatoes are forwarded from the points of origin without any definite knowledge as to what their final destinations will be. They are reconsigned and diverted in transit in order to distribute them as nearly as possible in accordance with the needs and demands of consuming points.

The main objection to the prayer of the complainant comes from the roads in official classification territory. They object to the establishment of a carload minimum or rule which will give to shippers the right to order small cars, and in the event of the carrier's inability to promptly furnish a small car the right to use a large car on the basis of the minimum prescribed for the smaller car. In *Noble v. B. & O. R. R.*, 22 I. C. C., 432, 438, we said:

The carriers contend that shippers should be required to adapt their necessities to the equipment which is available, even though the tariff may offer other equipment, and this, within reasonable limits, is true. We feel that shippers desiring to use equipment of unusual size may fairly be required to give a considerable notice of that desire to the carrier, so that the equipment ordered may be supplied. We are inclined to think, also, in order to avoid all dispute and favoritism, that the tariff of the carriers should provide a time within which, where equipment of a particular size is ordered, that equipment may be furnished. In the case before us the complainant waited six days for the small car. In our opinion, it would not be unreasonable for carriers to provide in their tariffs that the minimum applicable to the special car would not be protected unless the carrier had failed for six days, excluding the day of notice, to furnish the size of car ordered. It is not intended to relieve carriers from the duty of furnishing equipment within a reasonable time, but simply to fix a definite period beyond which the duty to furnish other equipment in lieu of that ordered shall attach.

This rule has been pretty closely adhered to since it was there laid down. It is not reasonable to suppose that at a time when

these shippers can not secure as many cars adapted to the transportation of their potatoes as they desire, they would wish to wait five or six days for a car of a particular size, and especially when they do not know what the final destination of the shipment will be. Counsel for complainants disclaims any desire on part of complainants to secure opportunity to order a small car with the hope or expectation that they will be furnished a large car to use on basis of the minimum prescribed for the small car. There are, as stated in the above quotation from the *Noble Case*, reasonable limits within which shippers should adapt their necessities to available equipment, and this principle seems to apply in this case.

From all the facts of record we find:

(1) That the present carload minima on potatoes shipped in standard cars from the points in the state of Minnesota to the points in official classification territory east of the Indiana-Illinois state line embraced in this complaint have been justified; that the present carload minimum on potatoes shipped in cars under 31 feet in length, inside measurement, or in cars 36 feet and under, outside measurement, when equipped with noncollapsible end ice bunkers, from and to said points, has not been justified; and that a just and reasonable carload minimum on potatoes shipped in such cars from and to said points is, and for the future will be, not in excess of 30,000 pounds.

(2) The failure to provide for free return of heaters and linings used with shipments of potatoes from and to the territories named is not shown to be unjust or unreasonable.

(3) Provisions for the return of heaters and linings used with shipments of potatoes from and to the territories named which result in charging a "greater compensation as a through route than the aggregate of the intermediate rates" are not justified, and defendants will be denied authority to continue such charges.

Appropriate orders will be entered.

43 I. C. C.

GRAIN PRODUCTS RATES VIA GREAT LAKES.¹

Submitted January 17, 1917. Decided April 2, 1917.

1. Increased through charges on grain products and by-products both domestic and export from points in the Chicago switching district via the Lehigh Valley Transportation Company to points east of Buffalo, N. Y., not justified by the respondents.
2. Increased through charges from points in the Chicago and Milwaukee switching districts resulting from the refusal of the Great Lakes Transit Corporation to absorb switching charges, and from the initial rates established by the latter carrier from its docks, not shown to be unreasonable nor unduly preferential.
3. Charges effected by combination on Chicago of the rates from St. Louis to points east of Buffalo via the Great Lakes Transit Corporation when applied to through shipments shown by the complainant to be unreasonable and unduly preferential. Respondents required to establish joint through rail-lake-and-rail rates, but because of lack of evidence in this record no rates specifically prescribed as maxima.

W. M. Hopkins for Bay State Milling Company, intervener.

Jeffery & Campbell and *J. S. Brown* for Board of Trade of City of Chicago.

George A. Schroeder for Chamber of Commerce of City of Milwaukee.

C. R. Hillyer and *Cassoday, Butler, Lamb & Foster* for Chapin & Company.

Charles Rippin for Merchants Exchange of St. Louis.

Isaac H. Mayer and *Levy Mayer* for Great Lakes Transit Corporation.

W. H. Bremner and *F. B. Townsend* for western rail lines.

O. W. Dynes and *H. E. Pierpont* for Chicago, Milwaukee & St. Paul Railway Company.

R. W. Barrett for Lehigh Valley Railroad Company.

C. A. Kelly for Chicago River & Indiana Railroad Company.

Philip Meininger for Baltimore & Ohio Chicago Terminal Railroad Company.

¹ This proceeding embraces complaints in—No. 8895, Board of Trade of the City of Chicago v. Lehigh Valley Transportation Co. et al.; No. 8907, Same v. Great Lakes Transit Corporation et al.; No. 9037, Chamber of Commerce of the City of Milwaukee v. Great Lakes Transit Corporation et al.; No. 9085, Chapin & Co. v. Great Lakes Transit Corporation et al.; and No. 9147, Merchants Exchange of St. Louis v. Great Lakes Transit Corporation et al.

Irving L. Artes for Chicago terminal lines.

F. H. Towner for Chicago & Alton Railroad Company, Illinois Central Railroad Company, Chicago & Eastern Illinois Railroad Company, and Wabash Railway Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

Several cases involving similar questions will be dealt with in this report.

In Docket 8895, the Board of Trade of the City of Chicago assails as unjust, unreasonable, and unduly prejudicial, carload, domestic, and export charges upon seeds, and grain products, and grain by-products from industries in the Chicago switching district to Buffalo and points east resulting from nonabsorbed switching charges in the Chicago switching district, added to the rates of the Lehigh Valley Transportation Company and its eastern connections. The allegations refer only to industries other than those on the lines of the Chicago & North Western Railway, the Chicago, Milwaukee & St. Paul Railway, and the Minneapolis, St. Paul & Sault Ste. Marie Railway. The Lehigh Valley Transportation Company and its eastern rail connections by tariff effective April 4, 1916, discontinued absorbing the switching charges from mills located in the Chicago switching district to the docks, and made the Chicago rates applicable only from the docks at Chicago, contrary to their custom of many years. In consequence, in addition to the rate via the Lehigh Valley Transportation Company from the docks to the east there is a charge of \$11 per car for switching to the dock. It is set forth that the miller in the Chicago district is now compelled to pay the switching charge to the dock while the miller west of Chicago pays only the Chicago rate to the dock with no switching charge added. The Lehigh Valley Transportation Company and eastern connections made no actual increase in their rates from the dock,¹ and the gist of this complaint is the withdrawal of the Chicago rates as joint through rates from all mills and industries in the Chicago switching district.

In Docket 8907, the Board of Trade of the City of Chicago attacks the rates on grain products and by-products to the east via the Great Lakes Transit Corporation, whose history is related in the *Bay State Milling Company Case, infra*. By tariff effective May 17, 1916, this water carrier and its eastern rail connections did not provide for the absorption of the switching charges from industries

¹ By tariff filed to become effective April 9, 1917, the Lehigh Valley Transportation Company proposed lake-and-rail rates in the commodities here involved, e. g., on grain and grain products as described in the tariff from Chicago and Milwaukee to New York increased to 15.5 cents and on grain by-products to 16.4 cents per 100 pounds.

located in the Chicago switching district; and by tariff effective June 4, 1916, published rates on grain products and by-products for export from the dock at Chicago to the east 1 cent per 100 pounds higher than those carried by other lake lines. The same tariff carried domestic rates effective May 4, 1916, which were higher than those carried by other lake lines by eight-tenths of a cent per 100 pounds on grain products when destined to the east and also on by-products to Buffalo, N. Y., and Erie, Pa.

It is pointed out in the complaints involving the Great Lakes Transit Corporation that whereas the Lehigh Valley Transportation Company has joint through rates from Minneapolis and other points east of the Mississippi River via Chicago and Milwaukee, the Great Lakes Transit Corporation has no joint through rates from western points via these Lake Michigan ports. The refusal to absorb the switching charge, and the rate higher by eight-tenths of a cent and 1 cent on domestic and export grain products and by-products, respectively, is the basis for the charge of unreasonableness in violation of section 1. The discrimination is predicated upon the failure of the Great Lakes Transit Corporation to absorb the switching—as was done by its predecessors—from the mills in the Chicago district to the docks, whereas the miller west of Chicago is not compelled to pay a switching charge at Chicago to this carrier's dock; and on the fact that the increase of eight-tenths of a cent per 100 pounds on grain products, to the east, domestic, from Chicago, was made without a like increase from Minneapolis and Duluth.

In Docket 9087, the Chamber of Commerce of the City of Milwaukee brings complaint against the Great Lakes Transit Corporation and its rail connections. By tariff effective June 4, 1916, the Great Lakes Transit Corporation published a rate from the docks in Milwaukee on grain products and by-products when destined for export 1 cent higher than that carried by the other lake carriers. This increase was uniform from Chicago, Milwaukee, Minneapolis, and Duluth. About the same time all the rates on grain products and to certain points on grain by-products, domestic, were increased eight-tenths of a cent per 100 pounds from Milwaukee and Chicago but not from Minneapolis and Duluth. The Lehigh Valley Transportation Company at the time of the hearing still published its rates from the industries within the Milwaukee switching district, absorbing the switching charge, and has made no increase in those rates. The Great Lakes Transit Corporation published a tariff on May 19, 1916, under which its rates applied only from the docks in Milwaukee, so that, from the industries in the Milwaukee switching district to the docks, the shipper incurs a charge of \$9 per car for switching in addition to the rate from the dock.

Unreasonableness is alleged because of the advance in the rate of 0.8 cent on domestic grain products and 1 cent on the same commodities for export, and because of the refusal of the Great Lakes Transit Corporation to apply the rate over its route from the Milwaukee mill.

Undue preference is alleged in favor of Minneapolis and Duluth; but the more serious charge of undue preference, complainant says, is the failure to apply the rate from industries in the Milwaukee switching district, giving an advantage to the miller west of Milwaukee. The Milwaukee miller has paid the same rate on grain into his mill that the miller located in a grain section pays to get the product of his mill to the Great Lakes Transit Corporation dock. This alleged preference is similar to that complained of at Chicago.

In Docket 9085, the complainant, Chapin & Company, is a manufacturer, or "mixer," of mixed feed for live stock. The mill is at Hammond, Ind., in the Chicago switching district, about 20 miles from the docks. As to switching charges, its complaint is the same as that of the Board of Trade of the City of Chicago in Docket No. 8907 above. Reparation is prayed. However, this complainant has discontinued its case against the Great Lakes Transit Corporation by letter of January 22, 1917, and consequently its contentions need not be specifically discussed, particularly as they are covered in the matter dealing with the Chicago Board of Trade complaint.

In Docket 9147, the Merchants' Exchange of St. Louis shows that the rail-lake-and-rail rates on flour and grain products and domestic grain by-products from St. Louis to eastern basing points and points taking the same rates were formerly 3 cents per 100 pounds over the rates from Chicago, and on grain by-products for export 2.5 cents over Chicago. When the Great Lakes Transit Corporation came into being, in 1916, and did not publish joint through rates from St. Louis to points east of Buffalo, shippers from St. Louis, desiring to make shipments via the Great Lakes Transit Corporation, were compelled to pay the local rates to Chicago, plus the rate from the Chicago dock to the east. Joint through rates from St. Louis, however, still exist by way of the Lehigh Valley Transportation Company, the Canada Atlantic Transit Company, the Cleveland & Buffalo Transit Company, and the Detroit & Cleveland Navigation Company. It is charged that the Great Lakes Transit Corporation has effected a discrimination against the complainant by carrying rates from Minneapolis via Duluth and rates from Duluth to the east on the same basis as existed prior to the operation of this lake carrier, while at the same time refusing to join in joint through rates from St. Louis on the former basis. The Commission is asked to prescribe joint through rates from St. Louis via the Great Lakes Transit Corporation to eastern destinations which will not be more than 3 cents over

the rail-lake-and-rail rates from Chicago. New York is taken as representative of the destinations involved.

COMPLAINT AS TO LEHIGH VALLEY TRANSPORTATION COMPANY.

The question involved in the complaint which makes the Lehigh Valley Transportation Company the chief defendant is whether this water carrier and its rail connections shall be compelled to apply a common rate from the industries within the Chicago switching district equal in amount to that formerly applicable, or be permitted to apply this rate from the dock, with the consequence that the shipper must in addition pay a switching charge to move his commodity from the industry to the dock.

The net result is that the through charges are increased by the switching charge to the dock. Consequently, the burden of proof lies upon the Lehigh Valley Transportation Company and its rail connections to prove the through charges, increased as they have been since January 1, 1910, are just and reasonable.

This water carrier produced evidence as to the financial result of its operation, which, were the boat line not a subsidiary of the Lehigh Valley Railroad, might be evidence of a need for increased revenue from this traffic in grain products and by-products which constitutes so large a portion of its business. The rail carriers parties to the joint through rates from the Chicago docks offered no evidence in justification of the increased charges nor was any showing made as to the appropriate remuneration for the rail haul east of Buffalo.

Unjust discrimination is complained of (1) as between shippers located within the Chicago switching district but not on or adjacent to the river or lake and shippers located on the river or lake who have access to the Lehigh Valley Transportation Company; (2) as between shippers located within the Chicago switching district and not adjacent to the river or lake and interior shippers at such cities as Peoria, Springfield, or Kansas City, who have through routes and joint rates via Chicago and the Great Lakes to eastern points—in certain instances lower than the through charges from Chicago under the present rates; (3) as between shippers in the Chicago switching district on the Chicago & North Western, the Chicago, Milwaukee & St. Paul, and the Minneapolis, St. Paul & Sault Ste. Marie, and shippers in the Chicago district not on these roads, since the Chicago dock rates continue to be applied from points in the Chicago switching district on the Chicago & North Western Railway, the Chicago, Milwaukee & St. Paul, and the Minneapolis, St. Paul & Sault Ste. Marie Railway on shipments which move over these rail lines to Milwaukee and thence via the Lehigh

Valley Transportation Company. It is, however, unnecessary to discuss the discrimination alleged to be brought about by the increased rates or whether or not there is a violation of section 4, because of the nature of our holding.

We are of the opinion and find that respondents have failed to sustain the burden cast upon them by the statute of proving that the increased through charges for the rail-lake-and-rail haul via the Lehigh Valley Transportation Company are just and reasonable. These respondents have sought to justify the joint through rates from the Chicago dock by evidence only as to the lake factor of the haul. They will be required to cancel tariffs which have effected the increased charges.

COMPLAINTS AS TO THE GREAT LAKES TRANSIT CORPORATION.

In *Bay State Milling Co. v. Transit Corporation*, 43 I. C. C., 338, it was concluded *inter alia* that upon the Great Lakes Transit Corporation and its rail connections there did not rest the burden of justifying their initial rates under the proviso of section 15 of the act; that this boat line is a new carrier which in no sense succeeded to the obligations of the old boat lines; and that a rate of 15.5 cents on grain products and by-products from Milwaukee via its boat line for New York had not been shown to be unreasonable.

The second count dealt with in this report is directed against the failure on the part of the Great Lakes Transit Corporation and carriers within the Chicago and Milwaukee switching districts to provide for the application from industries within said districts of rates to points east of Buffalo identical with the rates carried from the dock of the water carrier. As above indicated, this was formerly the practice with the railroad-owned boat lines.

It can not be accepted without proof that the duty of providing such an arrangement is incumbent on a new water carrier, or upon such carrier in connection with rail carriers in the two switching districts. In the absence of affirmative proof we can not here find a failure to meet obligations imposed by the act.

The rate on grain products, including flour, from all points in the Chicago and Milwaukee switching districts to New York which was applied by the railroad-owned boat lines was 14.7 cents. This rate at the time of the hearing was carried by the Lehigh Valley Transportation Company from the docks in those cities. The only rate which has ever existed over the independent lake carrier, the Great Lakes Transit Corporation, is 15.5 cents, applicable solely from the docks in both Chicago and Milwaukee. Since this 15.5-cent rate was held by us in the *Bay State Milling Co. v. Transit Corporation*, *supra*, not to have been shown unreasonable from Mil-

waukee, *a fortiori* from Chicago, which is about 85 miles farther from Buffalo via the lakes, it can not be held on this record to be an unreasonable charge.

The charge for switching from the industries in Chicago to the docks is \$11 a car, with a minimum of 60,000 pounds, and at Milwaukee \$9 a car. Below is a calculation taken from one of the exhibits of the complainant of the equivalent in cents per 100 pounds of the charge of \$11 per car from industries in the Chicago district to the dock of the Chicago River and Indiana Railroad:

Equivalent of \$11 charge at Chicago, in cents per 100 pounds.

Article.	Domestic.		Export.	
	Minimum weight (pounds).	Equivalent of \$11 per car.	Minimum weight (pounds).	Equivalent of \$11 per car.
Flour.....	40,000	2.8	44,000	2.5
Grain products other than flour.....	40,000	2.8	60,000	1.8
	36,000	3.1	60,000	1.8
	40,000	2.8	60,000	1.8
By-products.....	35,000	3.1	60,000	1.8
	30,000	3.7	60,000	1.8

If the weight carried exceeds the minimum, the charge per 100 pounds would, of course, be less than shown above. A witness for the respondent testified that from 100 expense bills taken at random, 94 were of domestic, and 6 of export shipments. The 94 domestic cars varied in weight from 40,184 pounds to 100,674 pounds, averaging 50,308 pounds. Assuming 50,000 pounds as an average of the cars of domestic traffic from the Chicago industries, the charge for switching would be 2.2 cents per 100 pounds. If 60,000 pounds, which is the minimum for the \$11 charge, were shipped, the equivalent in cents per 100 pounds of this \$11 charge would be 1.9 cents. Feed has a lighter loading, averaging about 40,000 pounds per car.

In seeking to show the rates to be unreasonable, the complainants depended largely upon the fact that the 15.5-cent lake-and-rail rate added to the switching rate from the industries in Chicago to the dock produce through charges which nearly approach, and in some instances slightly exceed, the all-rail rate. Conceding that the all-rail rate normally has exceeded the lake-and-rail rate, we can not assume without proof that it is incumbent on the Great Lakes Transit Corporation and its eastern rail connections to absorb the switching charge for bringing the commodity to the docks at Chicago or Milwaukee. Whatever arrangement is proper with reference to the charge for movement from points in the switching districts to the docks, it is not shown on this record that a new water carrier is obligated, even in conjunction with eastern rail connections, to absorb these charges.

DISCRIMINATION.

Discrimination is alleged as between shippers in the Chicago and Milwaukee switching districts, and shippers in Duluth, Superior, Minneapolis, Omaha, Kansas City, St. Louis, Cedar Rapids, Clinton, Decatur, Peoria, and all other millers and manufacturers of grain products in the territories southwest, west, and northwest of the great lakes.

It is pointed out that the Chicago and Milwaukee millers pay the rate on grain from the competitive buying territory in which these mills outside of the Chicago and Milwaukee switching districts also get their grain; that under this rate the grain moves to the industries at Chicago or Milwaukee, where it is made into the products, and that there is a switching charge of \$11 at Chicago and \$9 at Milwaukee to the docks of the lake line; that the manufacturer outside these two cities pays the rate on grain to his industry and makes it into the product on the milling-in-transit arrangement at the same total rate to the Milwaukee or the Chicago docks that the grain would have paid had it moved from the field directly to the dock. The Chicago or Milwaukee miller, however, pays the same rate from the same grain-producing section upon the grain to his mill in the Chicago or Milwaukee district, but upon his product is compelled to pay the further charge for switching of \$11 and \$9 to get the commodity to the docks of the lake line.

The vice president of the Great Lakes Transit Corporation admitted that the miller who paid this switching charge was at a disadvantage, but pointed out that for this discrimination the western line is responsible, as from the mills outside the switching districts the western line carries at the line-haul rate the product to the dock. Whether or not this disadvantage constitutes an unlawful discrimination or undue prejudice, and if so, how it should be removed, are questions which can not be determined on this record. In what manner western carriers, the Great Lakes Transit Corporation, and the carriers east of Buffalo might properly be required to join in a joint through rate applicable from the mills in these two switching districts, and what that rate should properly be, can not be determined on this record.

In *Bay State Milling Co. v. Transit Corporation*, *supra*, it was held that the fact that the present difference in the rates as between Milwaukee and Duluth and Minneapolis is eight-tenths of a cent less than before the advent of the Great Lakes Transit Corporation had not been shown to constitute a violation of section 3 of the act. This we hold to be equally true with respect to Chicago. That the joint through rates from Peoria and Pekin over the great lakes to the east by lake routes other than those traversed by the

Great Lakes Transit Corporation appear in some instances, depending on loading, to be less than the through charges from points in the Chicago switching district via the Great Lakes Transit Corporation to the same destinations does not of itself substantiate the allegation of undue preference.

We are of opinion and find that the present charges on grain products, including flour, and grain by-products from the industries in the Chicago and Milwaukee switching districts up to the docks and the joint rates on grain products to eastern points here involved via the Great Lakes Transit Corporation and connections have not been shown on the record to be unjust and unreasonable or unduly preferential. The complaint against the Great Lakes Transit Corporation and its rail connections will be dismissed. These findings as to the Great Lakes Transit Corporation, however, will in no sense be construed as an approval of the present divisions of the joint rates from Chicago docks.

COMPLAINT OF ST. LOUIS.

In this complaint violation of sections 1 and 3 of the act is alleged. Undue preference in favor of Minneapolis, Duluth, Superior, Milwaukee, Chicago, and Kansas City is charged. The complainant points out that rates on grain and grain products from the territory west of the Mississippi River, such as Oklahoma, Colorado, Kansas, Nebraska, Iowa, and Missouri, are generally so adjusted that the rate to St. Louis is 3 cents lower than the rate to Chicago: that previous to the divorce of the boat lines from their rail-carrier owners there had been from St. Louis to New York a joint through rail-lake-and-rail rate, domestic, on grain products of 3 cents over the rate from Chicago; that at present there are joint through rail-lake-and-rail rates on this basis via boat lines other than those of the Great Lakes Transit Corporation; that the Great Lakes Transit Corporation at present publishes joint through rates from Minneapolis to New York via Duluth; and that the only rail-lake-and-rail rates applicable at present over the Great Lakes Transit Corporation via Chicago are the local rate of 9 cents to Chicago and the joint lake-and-rail rate of 15.5 cents thence to New York, making a combination of 24.5 cents, domestic, or 4 cents over the all-rail rate.

As has been noted above, the Great Lakes Transit Corporation from the outset carried no joint through rail-lake-and-rail rates either from St. Louis or from any other point west of Chicago through Lake Michigan ports.

The 9-cent local rate from St. Louis to Chicago, after the deduction of a charge of 1 cent per 100 pounds for crossing the river at St. Louis, but with no deduction for the terminal charge at Chicago, which is not invariably the same, yields net ton-mile earnings of 5.8

mills, and for a haul of 280 miles, short-line distance from East St. Louis, is not *prima facie* excessive. The 15.5-cent rate from Chicago via the Great Lakes Transit Corporation was held above not to have been shown unreasonable. However, the sum of these two factors would appear excessive for a through haul of nearly 1,200 miles, particularly as it is 4 cents over the all-rail rate, and in effect precludes the use of the lake route via the Great Lakes Transit Corporation.

On the other hand, a joint through rail-lake-and-rail rate from St. Louis such as is sought, of 3 cents over the rate from Chicago, making a total of 18.5 cents—assuming the 15.5-cent rate from the Chicago dock is not improper—appears insufficient to accord the line west of Chicago adequate revenue, unless the water and rail lines east of Chicago contribute to augment the earnings of the western lines beyond the 3 cents additional from St. Louis. The Chicago & Eastern Illinois, speaking for the carriers west of Chicago, professes willingness to join in a joint through rate via the Great Lakes Transit Corporation which would yield the Chicago & Eastern Illinois the same division of 4.8 cents which that carrier receives under the all-rail rate. Deducting 1 cent for the bridge over the Mississippi at St. Louis and taking no account of the terminal charge at Chicago paid out of this division, the ton-mile yield for the 280-mile haul from East St. Louis is 2.8 mills. This would appear to be a moderate yield, and if to the 4.8-cent division which yields this moderate return to the western lines we should add the 15.5-cent factor from Chicago the result is 20.3 cents, practically the all-rail domestic rate to New York.

The Great Lakes Transit Corporation participates in a joint through rate of 23 cents from Minneapolis through Duluth to New York. The present combination rate, St. Louis to New York via the Great Lakes Transit Corporation and rail connections east of Buffalo, is 24.5 cents. The total distance by the route over the lake from Minneapolis through Duluth to New York is about 1,150 miles; the distance from St. Louis rail lake and rail via Chicago is about 1,175 miles. There is relatively a shorter rail haul from Minneapolis through Duluth than from St. Louis through Chicago. This rate relationship as between Minneapolis and St. Louis it is claimed results in an undue disadvantage to St. Louis via this Chicago route on the through traffic.

We are of opinion and find that it is unreasonable to apply the present combination of the local rate to Chicago, and the joint through rate, lake and rail, from Chicago to eastern basing points and points taking the same rates via the Great Lakes Transit Corporation on shipments of grain products and grain by-products from St. Louis to these eastern basing points, of which New York is

typical; that the respondents should establish through routes and joint through rail-lake-and-rail rates on these commodities from St. Louis to eastern basing points and points taking the same rates via Chicago and the Great Lakes Transit Corporation wherever there are joint through lake-and-rail rates from Chicago to the same points. But we are unable to determine on this record what in amount these rates should be.

HALL, *Chairman*, dissenting in part:

I concur in the conclusions reached by the majority as to the Lehigh Valley Transportation Company, and on the complaint of St. Louis, but not as to the increased through charges via the Great Lakes Transit Corporation from points in the Chicago and Milwaukee switching districts. To my mind the Great Lakes Transit Corporation and its concurring eastern rail connections were under the statutory burden of showing these increased charges to be just and reasonable, and have failed to justify them.

HARLAN, *Commissioner*, concurring:

In the findings and order so far as they relate to the rates and regulations proposed by the Great Lakes Transit Corporation I fully concur; but I am not able to give my assent to the disposition made of the rates and regulations proposed by the Lehigh Valley Transportation Company.

McCHORD, *Commissioner*, dissenting in part:

I am unable to agree with the majority in this case, in so far as they find that the "increased through charges from points in the Chicago and Milwaukee switching districts resulting from the refusal of the Great Lakes Transit Corporation to absorb switching charges, and from the initial rates established by the latter carrier from its docks, are not shown to be unreasonable and are not shown to be unduly preferential."

In one instance they deny the right of the Lehigh Valley Transportation Company to refuse to absorb the switching charges from Chicago, upon the ground that this is in effect increasing the rate, and that this company has not justified the increase; and in the other instance the refusal of the Great Lakes Transit Corporation to absorb the switching charges at Milwaukee is approved, on the ground that this is a new corporation, created and organized subsequent to the act of June 8, 1910, and is not required to justify the proposed rates.

In my opinion, the finding should be the same in each instance, and the switching charges should be absorbed by the respective companies at both ports. My views on this subject were set forth fully in my dissent in *Bay State Milling Co. v. Transit Corporation*, 43 I. C. C., 338, and as the majority report is based upon that opinion, I do not deem it necessary to reiterate them here.

Otherwise I concur in the report.

No. 8842.
CONSUMERS COMPANY
v.
**MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILWAY COMPANY ET AL.**

Submitted December 21, 1916. Decided April 2, 1917.

Upon complaint that the through charges assessed for the transportation of ice in carloads from points in Wisconsin on the Minneapolis, St. Paul & Sault Ste. Marie Railway to team tracks and industrial sidings in the Chicago switching district on the lines of the other defendants herein are unreasonable and unduly prejudicial to the extent that they include unabsorbed portions of the terminal switching charges; *Held*, That the through charges now exacted are not shown to be unreasonable or unduly prejudicial, but that the complainant was damaged by the payment of excessive charges during a portion of the period covered by the complaint. Reparation awarded.

John S. Burchmore and Luther M. Walter for complainant.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

Kenneth F. Burgess for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The complainant is an Illinois corporation engaged in harvesting natural ice at various points in northern Illinois and southern Wisconsin, on the lines of the Minneapolis, St. Paul & Sault Ste. Marie, Chicago & North Western, and Chicago, Milwaukee & St. Paul railways, and in the sale of ice at numerous points throughout the Chicago, Ill., switching district. By its complaint, filed May 1, 1916, it alleges that the charges assessed for the transportation of ice in carloads from Camp Lake and Silver Lake, Wis., on the line of the defendant Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter termed the Soo line, to Chicago, are unreasonable and unduly prejudicial in and to the extent that they include, in addition to the line-haul rate of 3 cents per 100 pounds, charges for delivery on team or industrial tracks of the other defendants herein. The Commission is asked to prescribe for the future a through rate of 3 cents per 100 pounds, and to award reparation on all of complainant's shipments delivered since May 1, 1914, on which charges have been paid in excess of 3 cents per 100 pounds.

Camp Lake and Silver Lake are 60 and 61 miles, respectively, from the principal terminal of the Soo line in Chicago. During the year 1915 the complainant shipped 1,175 cars of ice from those points to various destinations in the Chicago district and during the same period its ice shipments from all stations on the Soo line for delivery in Chicago totaled 4,109 cars. The terminals of the Soo line, although said to represent an outlay of over \$6,000,000, are less extensive than those of the Chicago & North Western or Chicago, Milwaukee & St. Paul railways, and consequently a proportionately larger number of shipments must be delivered at distributing points on the rails of other carriers. It is said that nearly 65 per cent of complainant's ice shipments originating at points on the Soo line must be delivered in Chicago through the medium of connecting lines, whereas but 31 per cent of its shipments originating on the Chicago, Milwaukee & St. Paul Railway and 49 per cent of those on the Chicago & North Western Railway move to destinations beyond the rails of those lines.

The maximum absorption of connecting lines' switching charges authorized by the Soo line is \$6 per car, which is conditioned on a gross revenue of \$15 or more per car. When the switching charges are in excess of \$6 per car the balance falls upon the shipper. Prior to July 15, 1914, the maximum absorption had been \$3 per car, which was increased to \$6 on the date mentioned.

The destinations in the Chicago district where the complainant receives or delivers ice from Illinois and Wisconsin producing points and to which the switching charges exceed \$6 per car are team tracks on the Belt Railway of Chicago, Indiana Harbor Belt Railroad, Chicago, Burlington & Quincy Railroad, Chicago & Western Indiana Railroad, and Pullman Railroad, and industry tracks on the Chicago & Western Indiana Railroad, Illinois Central Railroad, and Pullman Railroad. There are also certain team tracks on the Baltimore & Ohio Chicago Terminal Railroad to which the switching charges are in excess of the maximum absorption of the Soo line. The latter interchanges traffic directly with the Baltimore & Ohio Chicago Terminal, belt, Chicago, Burlington & Quincy, and Indiana Harbor Belt railways, but intermediate switching by way of the belt railway is required in order to reach the rails of the other delivering carriers named.

The tariff of the Soo line, concurred in by the above defendants, except the Pullman Railroad, provides a specific basis for making through charges to the destinations mentioned. For team-track deliveries on the belt, Chicago, Burlington & Quincy, and Indiana Harbor Belt railways, and certain team tracks on the Baltimore & Ohio Chicago Terminal, the through charges are constructed on the basis of 3 cents per 100 pounds for the line haul plus a terminal

charge of 1½ cents per 100 pounds, minimum \$7.50 per car, of which \$6 is absorbed, leaving \$1.50 in addition to the Chicago rate to be paid by the shipper. For deliveries on team tracks of the Chicago & Western Indiana Railroad the same switching charge is made by the delivering line, but there is also the intermediate charge of the belt railway of \$3 per car for the loaded movement and \$1.50 for the return of the empty. The amount to be paid by the shipper, therefore, for delivery on team tracks of the Chicago & Western Indiana Railroad is \$6 per car. The switching charges to industries on the Chicago & Western Indiana Railroad and Illinois Central Railroad are \$10.50 per car, based on 1 cent per 100 pounds, minimum \$6 per car, to the delivering roads and \$4.50 for the intermediate switching. The charge of the Pullman Railroad for deliveries on its team or industrial sidings is \$3 per car. The intermediate switching charge is \$4.50 per car, leaving an unabsorbed balance of \$1.50 per car. The Chicago & North Western and Chicago, Milwaukee & St. Paul railways effect deliveries on all of the above-mentioned lines at the flat Chicago rate.

This proceeding is, in effect, an effort on the part of the complainant to compel the Soo line to include ice within the application of the so-called Lowrey switching tariff. That tariff has been discussed in detail in a number of cases: *Advances on Coal within Chicago Switching District*, 27 I. C. C., 71; *Board of Trade of Chicago v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 438, and cases there cited; *People's Fuel & Supply Co. v. G. T. W. Ry. Co.*, 30 I. C. C., 657; *Eagle Ice Co. v. C., M. & St. P. Ry. Co.*, 37 I. C. C., 250, and others. Its purpose, briefly, is to accord the Chicago rate on shipments to all delivery points in the Chicago district provided the line-haul rate is 2½ cents per 100 pounds or higher and the freight charges \$15 or more per car. Exceptions have been made by individual carriers on certain low-grade commodities. The Soo line from the first has never included ice within the provisions of the Lowrey tariff on the theory that the unusual conditions incident to its transportation are such as to render it unprofitable to accord to it the full benefit of the reciprocal arrangement. The ice is loaded on spur tracks extending from a few hundred to several thousand feet from the main line and moves in special trains. The equipment used in this service returns to the loading points empty. The movement is irregular, depending on weather conditions, and more than half the tonnage moves between June 1 and September 30 of each year. The record shows that 73 per cent of complainant's shipments from Camp Lake and Silver Lake in 1915 moved during the period mentioned and 56 per cent from all points on the Soo line, interstate and intrastate.

The average weight of complainant's shipments from all points on the Soo line to Chicago in 1915 was 56,733 pounds. Excluding the intrastate shipments and considering the average load to be 28 tons and the average distance over the rails of the Soo line 60½ miles the gross revenue per car was \$16.80, or 27.8 cents per car-mile. Under the basis adopted for the construction of through rates from Wisconsin points the lowest terminal charge for switching 28 tons of ice from the junction with the Soo line to any of the destinations named in the complaint is \$7.50 per car and the highest \$12 per car. If these amounts are deducted from the gross revenue, the earnings of the Soo line for its haul would be \$9.30 per car, or 15 cents per car-mile to delivery points taking the minimum switching charge, and \$4.80 per car, or 8 cents per car-mile to the points where the maximum switching charge is made. The Soo line contends that it can not afford to absorb all switching charges in the Chicago district and insists that by absorbing \$6 of the charges and, in addition, paying to the switching lines a reclaim of \$2.25 on every car, whether held one day or five days, it has more than fulfilled its part in helping to equalize the charges for deliveries throughout the Chicago switching district.

The rates on ice from points in Wisconsin to Chicago have been heretofore considered in a number of cases. In *People's Fuel & Supply Co. v. G. T. W. Ry. Co.*, 27 I. C. C., 24, complaint was made against the through charge from Silver Lake to an industry on the line of the Grand Trunk Western Railway reached by means of an intermediate switching movement over the rails of the Illinois Northern Railroad. The charge was made by adding to the Soo line rate of 3 cents per 100 pounds 1 cent per 100 pounds, but not less than \$6 per car, plus \$2.50 per car for the intermediate switching of the Illinois Northern Railroad. The Soo line absorbed \$3 of the terminal charge. Prior to the adoption of the Lowrey tariff in August, 1911, the switching charge of the Grand Trunk had been \$3 per car, all of which had been absorbed by the Soo line, leaving the charge of the Illinois Northern to be borne by the shipper. After the Lowrey tariff became effective the switching charge of the Grand Trunk was increased, and under the specific basis used in constructing the through charge from Silver Lake subsequently became \$6 per car, resulting in an increase of \$3 per car to the shipper. The complainant contended for a through rate of 60 cents a ton to its siding, but our conclusion was that the rate sought had not been shown to be a reasonable through charge, although in so far as the through charges to the shipper had been increased by reason of the reciprocal arrangement in Chicago they were unjust and unreasonable. Our order required the defendants to establish and maintain charges for the future not in excess of 3 cents per 100 pounds plus \$2.50 per car.

In an earlier case, *Charges for Switching Ice*, 24 I. C. C., 660, which involved increased charges at Chicago for the delivery of ice from Wisconsin, due to higher switching charges made applicable under the Lowrey tariff, we held that the reciprocal switching arrangement should be applied in such way as not to result in additional expense to the shippers.

In November, 1914, the various carriers engaged in the transportation of ice from Wisconsin to Chicago, including the Soo line, increased the rates for the line haul one-half cent per 100 pounds. The increased rate of $3\frac{1}{2}$ cents was considered and condemned in *Eagle Ice Co. v. C., M. & St. P. Ry. Co., supra*. Reparation was awarded to the extent of one-half cent per 100 pounds on all shipments which had moved at the higher rate and upon which the complainants had borne the freight charges. The Consumers Company was not a party to that case but participated in the reparation under authority granted to the carriers on the special docket.

We have consistently held in the various proceedings involving the rates on ice from points in Wisconsin to Chicago and the absorption of the switching charges, that the arrangements entered into between the carriers and embodied in the Lowrey tariff should not be employed as a basis for increasing the through charges to the shippers unless the reasonableness of such increased charges was made clear. On the other hand, we have never required the carriers to include ice unqualifiedly within the application of the Lowrey tariff and thereby accord to it the benefit of the flat Chicago rates. That the Chicago & North Western and Chicago, Milwaukee & St. Paul railways have voluntarily done so does not afford a proper basis for requiring the Soo line to do likewise if the existing through charges are reasonable and nondiscriminatory. The complainant ships ice from stations on the Chicago & North Western and Chicago, Milwaukee & St. Paul at the flat Chicago rates to all the points in the Chicago district to which an extra charge is made on shipments which originate on the Soo line, but apparently finds the car supply of the former carriers inadequate at times to meet its demands. It therefore seeks to have its disabilities in this respect equalized either through the medium of increased absorptions by the Soo line or reductions in the through charges, to be shared in, if necessary, by the switching lines.

It is not apparent from the record that the total charges on complainant's shipments are higher now than they were on July 31, 1911, the day before the Lowrey tariff took effect. In fact, as is shown by an examination of the tariffs on file with the Commission, the charges, at least in the majority of instances, are now lower. The rates of the Chicago & Western Indiana Railroad and the Pullman Railroad were not on file here in July, 1911, so a comparison of past

and present charges to points on those lines can not be made. From May 1, 1914, two years before the filing of this complaint, until July 15, 1914, when the former absorption by the Soo line of \$3 per car was increased to \$6, the through charges to the shipper were higher than had formerly obtained and now obtain for the same service. It was this increased charge that was condemned in *People's Fuel & Supply Co. v. G. T. W. Ry. Co.*, *supra*, and which furnished the measure of the reparation granted in that case. We find nothing in this record which would warrant a different conclusion now. The allegation in the complaint that the defendants, other than the Soo line, by participating in lower rates from points on the Chicago & North Western and Chicago, Milwaukee & St. Paul railways to the same destinations in Chicago, unjustly discriminate against the complainant can not be sustained. The terminal lines are not interested in the amount of the absorptions by the trunk lines, and there is nothing of record to indicate that their charges differ in any respect depending on which carrier has the line hauls. In the one case the total switching charge is paid in part by the trunk line and in part by the shipper, while in the other case the trunk line pays it all. Nor can unjust discrimination be predicated merely on the refusal of the Soo line to meet the competition of the other carriers by the absorption of the total switching charges.

Our conclusion on the whole record is, and we so find, that the present through rates and charges have not been shown to be unreasonable nor to subject the complainant and other shippers of ice from points on the Soo line to unjust discrimination or undue prejudice. To the extent, however, that the charges assessed during the period between May 1, 1914, and July 15, 1914, exceeded those exacted at the present time they were unreasonable. We further find that the complainant was damaged in the amount that the charges paid and borne by it during the period specified were in excess of those which would have accrued under the basis adopted July 15, 1914, and now in force. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

No order for the future maintenance of the rate is required.

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No. 8561.

D. B. SCULLY SYRUP COMPANY ET AL.

v.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY
ET AL.

Submitted May 17, 1916. Decided April 2, 1917.

Rates on imported blackstrap molasses from Gulf ports, and on domestic blackstrap from New Orleans, La., and Louisiana producing points to Chicago and Chicago rate points, and to Milwaukee, Wis., not shown to have been unreasonable or unduly prejudicial. Complaint dismissed.

William N. Webb and Jeffery & Campbell for complainants.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company, Iberia & Vermilion Railroad Company, and others.

R. Walton Moore and Frank W. Gwathmey for Illinois Central Railroad Company, Mobile & Ohio Railroad Company, and others.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainants allege that defendants' rates on blackstrap molasses, hereinafter referred to as blackstrap, imported through Gulf ports, and on domestic blackstrap from Mobile, New Orleans, and Louisiana producing points to Chicago, to Peoria and Pekin, Ill., and Hammond, Ind., taking Chicago rates, and to Milwaukee, Wis., all hereinafter referred to as the complaining points, are unjust, unreasonable, and unduly prejudicial in violation of sections 1 and 3 of the act to regulate commerce. The prayer of the complaint is that the defendants be required to establish for the future, as maxima, and in lieu of the present rates certain other specific rates which are suggested as just and reasonable. Reparation is sought.

All rates stated herein are in cents per 100 pounds.

The history of the rates on blackstrap, both domestic and imported, from the places of origin mentioned in the complaint to St. Louis, Kansas City, Omaha, and other Missouri River points has been detailed in previous reports of the Commission. *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co.*, 31 I. C. C., 311, 312; *Molasses from Texas and Louisiana*, 40 I. C. C., 435. In respect of the rates to the complaining points it may be stated, briefly, that prior to the date in 1914 when the Mobile & Ohio Railroad estab-

lished a rate of 15 cents on imported blackstrap, of the value of 8 cents or less per gallon, from Mobile to St. Louis, that commodity, regardless of conditions as to value, and whether domestic or imported, had been moving from the various points of shipment at the rates applicable on molasses. From Mobile and New Orleans these rates had been 21 cents to St. Louis; 27 cents to Chicago and Chicago rate points; and 29 cents to Milwaukee. The 15-cent rate on imported blackstrap from Mobile to St. Louis, called a conditional rate because of the condition appended as to value, having been established by the Mobile & Ohio at a figure 6 cents below the molasses rate, the defendants made the import blackstrap rate to the complaining points herein likewise 6 cents under the molasses rate. The same relative adjustment between St. Louis and the complaining points was thus maintained on blackstrap that had theretofore obtained on molasses. The domestic rates were later made 3 cents higher than the import rates. *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., supra.* Kansas City and Omaha were subsequently given rates equal to those in effect to Chicago and Milwaukee, respectively. Later a 4-cent reduction was made to Kansas City, Omaha, and other Missouri River points, but no corresponding reduction has ever been made to Chicago or Milwaukee. At the time the complaint herein was filed the rates to Kansas City and Omaha were thus 4 cents under the rates to Chicago and Milwaukee, respectively. However, the Kansas City and Omaha import rates were increased 4 cents per 100 pounds on January 1, 1916, and subsequently, pursuant to our report in *Molasses from Texas and Louisiana, supra*, the domestic rates to the same points were increased 4 cents, thereby restoring the former relationship between Kansas City and Omaha, on the one hand, and Chicago and Milwaukee, respectively, on the other hand, on both import and domestic rates.

Defendants' tariffs provide two rates on blackstrap, the lower rate, dependent upon a declared value of 8 cents or less per gallon, commonly referred to as the "conditional rate," being 2 cents less than the rate which is commonly referred to as the "unconditional rate" and which is applicable when the value is in excess of 8 cents per gallon. The evidence in this case shows that at the time of the hearing the minimum price of this commodity had advanced, since the establishment of specific rates, from about 5 cents per gallon to approximately 18 cents per gallon.

The nature, uses, qualities, methods of handling, origin, distribution, and desirability of this commodity as a subject of transportation are fully described in recent reports of the Commission and need

not be further considered here. *Molasses from Texas and Louisiana, supra.*

The present import and domestic rates from Mobile and New Orleans to the complaining points are as follows:

To—	Import.		Domestic.	
	Condi-tional.	Uncon-ditional.	Condi-tional.	Uncon-ditional.
Chicago, Ill.....	21	23	24	26
Peoria, Ill.....				
Pekin, Ill.....				
Hammond, Ind.....				
Milwaukee, Wis.....	23	25	26	28

The rates which the complainant suggests would be just, reasonable, and nondiscriminatory, and which we are asked to establish as maxima for the future are the same as those which were in effect to the Missouri River cities at the time of filing the complaint herein and are indicated as (¹) in the following table, in which the rates to Cairo and St. Louis are inserted for comparative purposes:

To—	Import.		Domestic.	
	Condi-tional.	Uncon-ditional.	Condi-tional.	Uncon-ditional.
Cairo, Ill.....	13	15	16	18
St. Louis, Mo.....	15	17	18	20
Kansas City, Mo.....	¹ 17 ¹ 21	¹ 19 ¹ 23	¹ 20 ¹ 24	¹ 22 ¹ 26
St. Joseph, Mo.....				
Atchison, Kans.....				
Leavenworth, Kans.....				
Omaha, Nebr.....	¹ 19 ¹ 23	¹ 21 ¹ 25	¹ 22 ¹ 26	¹ 24 ¹ 28
South Omaha, Nebr.....				
Council Bluffs, Iowa.....				

¹ In effect at time complaint was filed.
² Rates now in effect as authorized by our report in *Molasses from Texas and Louisiana, supra.*

The import and domestic rates to Cincinnati and Louisville are also cited as being lower than those of which complaint is here made, but it is upon comparison with the import rates to St. Louis that the complainants most strongly rely. The conditional and unconditional import rates to St. Louis are 15 and 17 cents, respectively, and include 1½ cents per 100 pounds allowance for bridge toll, which is absorbed by the lines to St. Louis. No similar allowance is necessary on traffic to the complaining points.

The short-line distances from Mobile and New Orleans to the complaining points and to St. Louis, Kansas City, and Omaha, and the
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unconditional import rates and earnings per ton-mile thereunder are shown in the following table:

To—	From Mobile, Ala.			From New Orleans, La.		
	Miles.	Rate.	Earnings per ton-mile.	Miles.	Rate.	Earnings per ton-mile.
		<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>	<i>Mills.</i>
St. Louis.....	647	17	5.25	701	17	4.8
Peoria.....	774	23	5.94	820	23	5.5
Pekin.....	765	23	6.01	820	23	5.6
Hammond.....	857	23	5.37	912	23	5.0
Chicago.....	857	23	5.37	912	23	5.0
Milwaukee.....	942	25	5.31	997	25	5.0
Kansas City.....	868	23	5.30	867	23	5.3
Omaha.....	1,060	25	4.72	1,061	25	4.7

Complainants compare the import rates on blackstrap with import rates from Gulf ports to St. Louis and Chicago on other commodities, viz, burlap bags to Chicago and St. Louis, 16 cents; coffee to Chicago, 25 cents, St. Louis, 23; foot oils from New Orleans to Chicago, in tank cars, 21 cents, St. Louis, 19 cents; woods of value (logs), 16 cents from Gulf ports to Chicago; to St. Louis, 13 cents. Other commodities are shown some of which take lower rates than apply on conditional imported blackstrap. It is contended that there is no justification for a spread or differential of 6 cents from St. Louis to Chicago on blackstrap when the spread on coffee is only 2 cents. It should be stated in this connection that our examination of the tariffs discloses that equal rates apply to Chicago and St. Louis on other imported commodities not cited by complainants. Complainants also call attention to the fact that the ton-mile earnings on blackstrap to Chicago and the other complaining points are higher than those yielded by the rates to St. Louis. However, it should be borne in mind that while the haul from Mobile to St. Louis is by one carrier, traffic destined to the complaining points involves handling by two or more lines.

The rates from a number of Louisiana producing points are the same as from New Orleans and complainants contend that this extension of the New Orleans rate to the plantation shipping points, or, as their witness puts it, the absorption of the charges into New Orleans out of the through rates from New Orleans to complaining points, is evidence that the rates from New Orleans direct are unreasonable.

For purposes of comparison, in connection with the contention that the spread in the rates on blackstrap between St. Louis and Chicago is too great, we have compiled from tariffs on file with the Commission the following table showing the domestic rates on a number of other commodities from New Orleans to St. Louis, Chicago, and

Milwaukee and the spread or difference in the rates to Chicago and Milwaukee over St. Louis:

	From New Orleans to—			Excess in rate over St. Louis to—	
	St. Louis.	Chicago.	Milwaukee.	Chicago.	Milwaukee.
Alcohol, denatured, in barrels or drums or tank cars..	23	27	29	4	6
Canned goods.....	27	32	34	5	7
Cottonseed oil in barrels or tank cars.....	22	27	29	5	7
Cottonseed foots, soap stock, in tank cars.....	19	21	26	2	7
Grease in tank cars, soap stock other than cottonseed oil.....	19	24	26	5	7
Turpentine in tank cars or barrels.....	28	31	33	3	5
Oil, soya beans, in barrels or tank cars.....	22	27	29	5	7
Petroleum, crude or refined, and products, in tank cars.....	18	23	26	5	8
Soap, unfinished, dry in barrels, value 2 cents per pound.....	19	25	27	6	8
Whisky, alcohol wines, in wood, o. r. l.....	33	39	42	6	9
Wines, whisky, liquor, n. o. s.....	47	55	60	8	13

Complainants also compare the rates on blackstrap with the rates on sugar and molasses sirup and two statements were introduced to show the variations between the rates on sugar and molasses and blackstrap to various points.

Blackstrap is rated fifth class in southern, official, and western classifications. The latter provides class C on blackstrap in tank cars. The present fifth-class import rates from Gulf ports to St. Louis, Chicago, Milwaukee, and related points are as follows:

Chicago, Louisville, and group 5 points.....	25. 5
Evansville, Ind., Peoria, Ill., and group 8 points.....	28. 7
St. Louis and group 12 points.....	30. 9

Group 5 includes Milwaukee, Wis., and Hammond, Ind.
Group 8 includes Pekin, Ill.

It will be noted that the fifth-class import rate from Gulf ports is the same to Chicago and Milwaukee and that it is 5.4 cents less than to St. Louis. The domestic fifth-class rate from New Orleans to St. Louis is 40 cents; to Chicago, 47 cents; and to Milwaukee, 49 cents. Here it will be noted the fifth-class domestic rate to Chicago is 7 cents over the rate to St. Louis, and to Milwaukee 2 cents higher than to Chicago.

The several petitioners may be divided into three classes—those engaged in the manufacture of stock feed, manufacturers of alcohol, and manufacturers or blenders of sirup. The competition between the complaining points and St. Louis is keen. Here, as in other cases involving rates on blackstrap, the margin of profit made by the users and manufacturers is asserted to be very narrow, although the record does not show that the small profits are necessarily attributable to the rates on blackstrap.

Manufactured feed is sold in competition, to some extent, with the natural grain, and this product usually moves on the grain rates. The testimony is that the rates on blackstrap put the manufacturers at the complaining points at a great disadvantage in competing with St. Louis and Missouri River points; that under the adjustment of rates St. Louis competitors can undersell them in competitive territory by from 3 to 7½ cents per 100 pounds. In support of this contention one of the complainants' witnesses made comparisons of the inbound rates on blackstrap to the complaining points plus the outbound rates on manufactured feed to various competitive points, with the corresponding rates to and from St. Louis. In the witness's calculations, however, he applied the inbound rate on 100 pounds of blackstrap plus the outbound rate on 100 pounds of feed. For example, he shows the combination of the inbound rates on blackstrap to Milwaukee and St. Louis plus the outbound rates on the manufactured feed to Philadelphia to be, respectively, 39.4 and 34.4 cents, and contends that this shows a 5-cent advantage in favor of St. Louis. Since approximately only 20 pounds of blackstrap ordinarily enter into the manufacture of 100 pounds of feed, the witness's formula is erroneous and the results necessarily misleading. The conditional rates on blackstrap are 15 cents to St. Louis, 23 cents to Milwaukee. The rates on feed are 16.4 cents from Milwaukee to Philadelphia, 19.4 cents from St. Louis to Philadelphia. Computed on the basis of 20 pounds of blackstrap in a mixture of 100 pounds of feed, the combined charge on feed shipped to Philadelphia would be: From Milwaukee, 21 cents; from St. Louis, 22.4 cents, indicating 1.4 cents advantage in favor of Milwaukee. The same ratio obtains if the unconditional rates be applied. And even if the proportion of molasses in the feed be as much as 40 per cent, Milwaukee would still be on a practical equality with St. Louis. The advantage in the in and out bound rates over St. Louis is still greater at Chicago and Chicago rate points. Close examination of the statements containing these comparisons does not indicate that the complaining points are at any substantial disadvantage in competition with St. Louis unless it be at points which, geographically, appear to be more naturally tributary to St. Louis than to the complaining points. The evidence shows that, notwithstanding the claimed disadvantage in rates, complainants can, and do, actively compete in central freight association and trunk line territories, and that the Milwaukee manufacturer of feed even sells a considerable amount in southeastern territory.

Complainants say on brief:

There is no doubt but that blackstrap could move in the future at the present rates if they are allowed to stand, so far as sirup manufacturers are concerned, but the alcohol producers are already out of business in Peoria.

The manufacturer of alcohol at Peoria finds his market principally at the Atlantic seaboard, where he meets competition with alcohol manufactured from blackstrap at points in Gulf coast territory. By reason of the greatly increased demand for blackstrap and the increase in the price, one manufacturer who began using blackstrap in 1915 has been obliged to discontinue the use of that article in the manufacture of alcohol. Distillers in the Gulf coast territory, according to the testimony, are heavy consumers of blackstrap. They do not have to pay inland freight charges, nor do they have all the incidental expenses, such as car rental, storage, etc. Moreover, they can transport their product to North Atlantic ports by water at a much lower freight charge than that from Peoria to the same markets. The distiller at Peoria must also meet the competition of distillers at St. Louis and the Ohio River crossings, all of whom have an advantage over Peoria in the matter of freight rates from the Gulf ports.

The sirup refiner or manufacturer who blends blackstrap with molasses or sirup and produces an article used in baking and for edible purposes meets competition with sirups from New Orleans and St. Louis. He contends that he is subjected to undue disadvantage because the New Orleans manufacturer can ship sirup to competitive markets at through rates which are less than the combination of rates on blackstrap to the complaining points plus the outbound rates on sirup made therefrom, and by the further fact that his competitor at St. Louis can handle the refined product on a lower combination of in and out rates to the same points than can complainants.

The rates on blackstrap have been increased to competing points other than St. Louis since this complaint was filed. Moreover, the rates on molasses have also been increased 2 cents per 100 pounds, which should operate to the advantage of the manufacturer or blender of sirups at Chicago. *Molasses from Texas and Louisiana, supra.* In none of the instances cited does the evidence disclose discrimination that can be said to be unjust or undue within the meaning of the statute.

Complainants contend on brief that the effect of the increase in the price of the commodity, which we infer causes the application of the unconditional rates to all of the traffic, has automatically increased the rates on the commodity and that there is no justification for a difference in rate dependent upon value upon such a low-grade commodity as blackstrap. The differential of 2 cents based on value was prescribed by us in *Louisiana Sugar Planters' Asso. v. I. C. R. R. Co., supra.* No issue was raised in the instant complaint with respect to the propriety of a differential in rates predicated upon value, and no consideration can here be given to that question.

The evidence relative to alleged lack of consistent relationship between the rates on sugar, on the one hand, and molasses and blackstrap on the other, is substantially the same as that which has hitherto been presented in other cases involving rates on blackstrap and molasses. *Molasses from Texas and Louisiana, supra*. The circumstances and competitive conditions surrounding the sugar traffic differ materially from those affecting the molasses traffic. *Clinton Mfrs. & Shippers Asso. v. C. & A. R. R. Co.*, 27 I. C. C., 230. There is no proof of undue discrimination in favor of sugar, and the record in this case suggests no reason why the rates on sugar to St. Louis or the complaining points should serve as a guide in determining either the measure or the relationship of the rates on blackstrap as between St. Louis and complaining points. In effect, complainants' principal witness admits the existence of special conditions affecting the transportation of sugar, and says that he does not think there should be any definite relationship between the rates on the two commodities.

The carriers pay a mileage allowance of three-fourths cent per mile, loaded and empty, for the use of the tank cars in which blackstrap is transported. These tank cars are either privately owned or are leased by the shippers. The cost of the upkeep and cleaning of the cars is borne by the owners or lessees. The lessee pays the owner a stated rental therefor and receives credit on the rental charge for the mileage allowance received by the owner from the carrier. This mileage allowance, however, is seldom ever equal to the rental charge. Defendants submitted a statement showing that the gross revenue per ton-mile from New Orleans to Chicago, a distance of 912 miles, based on 80,000 pounds loading and 20 tons for average weight of the tank car, value 8 cents per gallon or less, to be as follows: On gross loaded weight, 3.50 mills per ton-mile; on gross loaded and empty weight, 2.63 mills per ton-mile; when the value is in excess of 8 cents per gallon, on gross loaded weight, 3.78 mills per ton-mile; on gross loaded and empty weight, 2.85 mills per ton-mile. The record indicates, however, that the average loading of blackstrap in tank cars is nearly 90,000 pounds, which would increase the earnings on the car above those stated. While it is apparently true, as asserted by complainants, that the carriers have made no special investment in equipment or facilities for the transportation of blackstrap, yet analyses of these rates for the purpose of ascertaining the ton-mile and car-mile earnings thereunder, and the comparison of such earnings should, nevertheless, not fail to give consideration to the fact that the return movement of the tank car is usually an empty one. This factor was considered in *Molasses from Texas and Louisiana, supra*.

The defendants asserted that the blackstrap rates here involved are lower than they would otherwise be were it not for competitive

influences which depress them; that their history demonstrates that the present rates to the complaining points represent substantial reductions from the rates under which the commodity moved freely prior to the establishment of the 15-cent rate from Mobile to St. Louis; that they are lower than the rates on molasses from New York to Chicago moving over a distance equal to that from New Orleans to Chicago and through a territory of much higher traffic density. They contend that the rates are low in comparison with the rates on various other low-grade commodities, such as vinegar and glucose moving in tank cars, and they cite the following domestic rates: Glucose from Chicago to New Orleans, 25 cents; vinegar from Chicago to New Orleans, 35 cents. These are higher than the present import rates on blackstrap from the Gulf ports to any of the complaining points. Comparison is also made with rates on blackstrap from New Orleans to points in central freight association territory where no special rates apply and the blackstrap still moves at the molasses rate. Complainants reply that as a matter of fact there never has been a "reduction" in the rates on blackstrap; that the blackstrap rates were newly established rates; and that the adjustment was unreasonable and discriminatory in its inception. The volume of blackstrap moving to central freight association points under the molasses rates is not shown, but doubtless is not comparable with that to the complaining points.

The risk attending the transportation of blackstrap is almost negligible. There are but few claims. Defendants assert that the import rates from Gulf ports to Chicago and St. Louis heretofore compared afford no proper basis for a comparison of rates on blackstrap; that the import rates from Gulf ports on the commodities mentioned by the complainants are made to meet competition from north Atlantic ports; and that it therefore results that the import rates from the Gulf ports to St. Louis are as high, sometimes even higher, than to Chicago. No such competition is shown to exist in the transportation of blackstrap. This same situation was noted by us in connection with the establishment of the 15-cent rate from Mobile to St. Louis. *Molasses Rates from Mobile, Ala.*, 28 I. C. C., 666.

The rates to the Ohio and the Missouri river points cited by complainants in comparison with those under attack are all affected by water competition. Complainants admitted at the hearing that they do not feel any competition from Kansas City, and we may reasonably assume that the recent increases in the import and domestic rates to Missouri River points, including Omaha, approved in *Molasses from Texas and Louisiana, supra*, have done away with any undue discrimination that may have existed in favor of the latter point when this complaint was filed.

The circumstances under which the 15-cent rate from Mobile to St. Louis was established are fully detailed in the report of the Commission in *Molasses Rates from Mobile, Ala., supra*. The Mobile & Ohio Railroad is a continuous line from Mobile to St. Louis and is the rate-making carrier. The establishment of the 15-cent rate by it was earnestly opposed by the Louisville & Nashville and Illinois Central railroads, principally upon the ground that because of the competitive situation at the Gulf ports the last-named carriers would be obliged to carry as low a rate from New Orleans. The Mobile & Ohio Railroad is alone responsible for the establishment and maintenance of a 15-cent import rate from Mobile to St. Louis. Compelling circumstances of competition over which they have no control have forced the establishment and maintenance of a like rate on import blackstrap by the carriers operating from New Orleans to St. Louis. The domestic rates being differentially 3 cents over the import rates are thus, in effect, fixed by the import rate.

We are of the opinion, upon consideration of all the facts of record, that the rates complained of have not been shown to be either unreasonable or unduly prejudicial within the meaning of the law.

An order will accordingly be entered dismissing the complaint.

43 I. C. C.

No. 7674.
H. A. HEARON ET AL.
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

FOURTH SECTION APPLICATIONS Nos. 1605 AND 2045.

Submitted August 23, 1916. Decided April 3, 1917.

Claim for reparation on four carloads of vehicles from Indianapolis, Ind., to Ackerman, Miss., denied.

O. M. Rogers for complainant.

A. P. Humburg for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are H. A. Hearon, a dealer in vehicles at Ackerman, Miss., and the O. M. Rogers Company, of Chicago, Ill. By complaint, filed January 18, 1915, they allege that the rate charged by defendant on four carloads of vehicles shipped from Indianapolis, Ind., to Ackerman in 1911 was unreasonable and in violation of the long-and-short-haul rule of the fourth section. Reparation is asked. The claim was first presented to the Commission August 31, 1912, on behalf of complainant H. A. Hearon. Rates are stated in cents per 100 pounds.

The shipments weighed 62,800 pounds and charges were originally collected in the sum of \$571. Charges at the through second-class rate of \$1 applicable were \$628 and the undercharge of \$57 was subsequently paid by the O. M. Rogers Company. The rate charged was alleged in the complaint to be in excess of a combination rate of 84½ cents contemporaneously maintained from Indianapolis to Strong's, Miss., to which Ackerman is intermediate, composed of a proportional second-class rate of 19.5 cents to Cairo, Ill., and 65 cents beyond. But this rate was not applicable to through shipments, there being contemporaneously in effect a through second-class rate of \$1. Subsequently to the movement of the shipments the Indianapolis-Cairo proportional component of the combination rate was canceled. At the hearing complainants abandoned their claim for reparation based on the 84½-cent rate, but pointed out that during the period the shipments moved defendant maintained a combinat

rate of 96 cents applicable over the route of movement: 31 cents to Cairo and 65 cents thence to Ackerman, and that a commodity rate of 96 cents, Indianapolis to Ackerman, was made effective January 20, 1913. However, on July 15, 1916, the commodity rate was canceled, thereby again rendering applicable the \$1 through rate. At the same time the intermediate rates to and from Cairo were increased to 32.1 cents and 75 cents, respectively, thus rendering applicable a combination rate of 107.1 cents, which is still in effect.

Those portions of Fourth Section Applications No. 1605 of C. E. Fulton, agent, and No. 2045 of the Illinois Central Railroad, in which authority is sought to continue greater charges for the transportation of vehicles from Indianapolis to Ackerman as a through route than the aggregate of the intermediate rates to and from Cairo, were set for hearing with the complaint. The present rates conform to this requirement of the fourth section.

Complainant H. A. Hearon was not present at the hearing. No one having personal knowledge of the facts concerning the shipments or the payment of the freight charges, other than the undercharge of \$57 above mentioned, appeared at the hearing. Complainant H. A. Hearon paid less than would have accrued at the combination rate of 96 cents and has not been damaged. The O. M. Rogers Company is a stranger to the transportation record. The payment by it of the undercharge was a voluntary act, and that company is not properly a complainant in this proceeding.

The complaint will be dismissed.

43 I. C. C.

No. 8624.
GRAVES COAL & COKE COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted April 27, 1916. Decided April 3, 1917.

Charges collected on two carloads of coal shipped from Du Quoin, Ill., to Cape Girardeau, Mo., and reconsigned to Gideon, Mo., found unreasonable. Reparation awarded.

H. S. Graves for complainant.

Thomas Bond for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are H. S. Graves and William P. Graves, copartners, engaged in the coal business at St. Louis, Mo., under the name of the Graves Coal & Coke Company. By complaint, filed July 19, 1915, as amended, they allege that the charges collected by defendants for the transportation of two carloads of coal shipped July 25, 1913, from Du Quoin, Ill., to Cape Girardeau, Mo., and reconsigned to Gideon, Mo., were unreasonable. Reparation is asked.

The shipments weighed 101,400 pounds and 71,700 pounds, respectively, and apparently moved by way of the Illinois Central and the Chicago & Eastern Illinois railroads to Chaffee, Mo., and the St. Louis & San Francisco Railroad thence to Cape Girardeau. At complainants' request the shipments were reconsigned to Gideon, and the St. Louis & San Francisco transported them to that point, the movement necessitating a back haul through Chaffee of 26 miles. Defendants' tariff authorized reconsignment at the through rate, but it provided an additional charge of 1½ cents per 100 pounds, or 25 cents per ton, for back hauls or out of line hauls of 30 miles and over 20 miles. Charges were collected in the sum of \$146.89, based on a joint rate of \$1.45 per ton applicable from Du Quoin to Gideon by way of Chaffee, plus an additional charge of 25 cents per ton for the out of line haul to and from Cape Girardeau. The joint rate was subsequently increased to \$1.55 per ton, the present rate. When the shipments moved a rate of 60 cents per ton applied over the route of movement from Du Quoin to Cape Girardeau, and a rate of

4½ cents per 100 pounds, or 85 cents per ton, from Cape Girardeau to Gideon, aggregating \$1.45 per ton.

Complainants contend that the charges collected were unreasonable to the extent that they exceeded \$1.45 per ton, the sum of the rates to and from Cape Girardeau. Defendants assert that the rates to and from Cape Girardeau were influenced by keen competition and were abnormally low.

We find that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued at a rate of \$1.45 per ton, the sum of the rates contemporaneously in effect to and from Cape Girardeau; that complainants made the shipments as described and paid and bore charges thereon herein found to have been unreasonable; that they have been damaged to the extent of the difference between the charges paid and the charges which would have accrued at a rate of \$1.45 per ton; and that they are entitled to reparation in the sum of \$21.39, with interest. An order will be entered awarding reparation. The shipment weighing 101,400 pounds was undercharged 25 cents, which the defendants may waive.

43 I. C. C.

No. 9146.

McGOWAN-FOSHEE LUMBER COMPANY

v.

FLORIDA, ALABAMA & GULF RAILROAD COMPANY
ET AL.

INVESTIGATION AND SUSPENSION DOCKET No. 913.

FOREST PRODUCTS FROM FALCO, ALA.

Submitted January 15, 1917. Decided April 2, 1917.

Rates on yellow-pine lumber from Falco, Ala., on the Florida, Alabama & Gulf Railroad, 26 miles from Galliver, Fla., its junction with the Louisville & Nashville Railroad to various destinations north of the Ohio River found unreasonable and unduly prejudicial to the extent that since January 1, 1916, they have exceeded the rates from Galliver by more than 2 cents per 100 pounds, and for the future unduly prejudicial in so far as they exceed the rates contemporaneously in effect from Galliver. Reparation awarded.

John R. Walker for complainant.

Edward D. Mohr and *Wm. Burger* for Louisville & Nashville Railroad Company.

Robert H. Anderson for Florida, Alabama & Gulf Railway Company and its receiver.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Falco, Ala., is the northern terminus of the Florida, Alabama & Gulf Railroad which extends southwardly to, and connects with the Louisville & Nashville Railroad at Galliver, Fla., 26 miles from Falco. Joint through rates on yellow-pine lumber are published from Falco to Ohio River crossings and to points on the last-named line in Kentucky and Tennessee on the basis of an arbitrary of 3½ cents per 100 pounds, which is also the local rate from Falco to Galliver, over the rates from Galliver, and to destinations north of the Ohio River, east of the Mississippi River, and west of and including the so-called Buffalo-Pittsburgh zone, on the basis of an arbitrary of 2 cents per 100 pounds over the rates from Galliver. Joint through rates are not published from Falco to points in trunk line territory, through rates from Falco to that territory being constructed on the Galliver combination.

The complaint in No. 9146, filed by a corporation engaged in the manufacture of yellow-pine lumber at Falco, attacks the through

rates from that point to all the destinations above referred to as unjust, unreasonable, and unjustly discriminatory, and asks for through rates in lieu thereof which shall not exceed those in effect from Galliver, and for reparation. By the schedules involved in Investigation and Suspension Docket No. 918, which were published to become effective September 4, 1916, but suspended on protest of complainant herein to July 2, 1917, an increase from 2 cents to 3½ cents per 100 pounds is proposed in the arbitrary added to the joint through rates from Galliver to points in central freight association and Buffalo-Pittsburgh territories to make through rates from Falco. In other words, it is proposed to place the through rates from Falco to points in those territories on the Galliver combination, the basis now in effect to the other destination territories above referred to. The two cases were heard together and will be disposed of in one report.

Complainant's mill has a capacity of about 70 cars of lumber per month. The lumber is manufactured from timber standing between Falco and Galliver and brought to the mill at Falco by the Florida, Alabama & Gulf Railroad. Complainant purchased the mill and timber from the Florida & Alabama Land Company, which was then controlled by the same interests that owned the railroad. There is no connection, however, between complainant and the railroad.

Of complainant's output of lumber approximately one-half is shipped to points in the states of Alabama, Kentucky, and Tennessee and in central freight association, Buffalo-Pittsburgh, and trunk line territories. In these consuming territories complainant comes into competition with other mills located in a large yellow-pine blanket territory. Roughly described, this blanket comprises all points located on the so-called trunk lines and some short lines in the states of Louisiana, Mississippi, Alabama, and Florida, east of the Mississippi River, south of a line drawn from Vicksburg, Miss., through Jackson and Meridian, Miss., Thelma, Montgomery, and Opelika, Ala., to the Chattahoochee River, and west of the Chattahoochee River to the Gulf of Mexico, a lumber-producing territory extending approximately 400 miles east and west and 150 miles north and south. The only trunk line traversing this territory that is a party to these proceedings is the Louisville & Nashville Railroad, and it was the competition of mills on that line that complainant particularly referred to at the hearing.

Rates on lumber from all points on that line in the above-described territory are blanketed to Ohio River crossings and destinations in Kentucky and Tennessee and in central freight association, Buffalo-Pittsburgh, and trunk line territories. Complainant demands that the through rates from Falco to those destinations be made on the blanket basis; that is, the same basis as applies from Galliver and all mill points on the main line and branch lines of

the Louisville & Nashville Railroad south of Montgomery. The delivered prices quoted by mills located at points which are accorded the blanket basis of rates must be met by complainant, with the result that complainant receives from 50 cents to \$1 per 1,000 feet less for its lumber than its competitors receive for the same kind of lumber.

The average distance from points on the Louisville & Nashville within the yellow-pine blanket south of Montgomery to Cincinnati, a representative Ohio River crossing, as shown by an exhibit filed by witness for the Louisville & Nashville in *Southeastern Lumber*, 42 I. C. C., 548, and referred to in this record, is approximately 762 miles. The largest production of yellow-pine lumber on this line is on the Alabama & Florida division, which extends from Georgiana, Ala., to Graceville, Fla. The next largest production is on the Pensacola & Atlantic division, which extends from Pensacola through Galliver to River Junction, Fla. It is estimated that the distance from Mobile to Cincinnati, 777 miles, approximates the average weighted haul from the blanket territory to Cincinnati. While the distance from Falco to Cincinnati, 828 miles, is slightly greater than the average weighted distance from the Louisville & Nashville blanket points, it is well within the outside limits of the blanket. This is shown by the following table of distances from all main-line and branch-line termini on the Louisville & Nashville within the blanket:

To Cincinnati from—	Miles.
Falco, Ala.....	828
New Orleans, La.....	917
Foley, Fla.....	788
Pensacola, Fla.....	761
Camden, Ala.....	798
Myrtlewood, Ala.....	891
Graceville, Ala.....	758
Florala, Ala.:	
Via Crest View, Fla.....	838
Via Duvall, Ala.....	728
Lakewood, Fla.....	732
Paxton, Fla.....	730
River Junction, Fla.....	922

The Louisville & Nashville participates in the blanket basis of rates from points on the Gulf & Ship Island; Mississippi Central; New Orleans Great Northern; New Orleans, Mobile & Chicago; Central of Georgia; Atlantic Coast Line; and Seaboard Air Line railroads. Complainant contends that so long as the Louisville & Nashville applies that basis from points on other lines it should apply the same basis from Falco by participating in like joint through rates with the Florida, Alabama & Gulf Railroad.

As stated, it is proposed, by the schedules under suspension, to increase the joint through rates from Falco to points in central freight association and Buffalo-Pittsburgh territories $1\frac{1}{2}$ cents per 100 pounds. Prior to July 10, 1916, the joint through rates from Falco to points on the Louisville & Nashville in Alabama, Kentucky, and Tennessee north of Decatur, Ala., and Knoxville, Tenn., were constructed on basis of an arbitrary of 2 cents per 100 pounds over the rates from Galliver. On that date this arbitrary was increased to $3\frac{1}{2}$ cents per 100 pounds. The through rates from Falco to points in trunk line territory have always been made on the Galliver combination, and on January 1, 1916, the local rate from Falco to Galliver was increased from 2 cents to $3\frac{1}{2}$ cents per 100 pounds. As all of the rates involved have been increased since January 1, 1910, or are proposed to be increased by the schedules under suspension, the burden of proof is on defendants to show that the present and proposed increased rates are just and reasonable. The burden is on complainant in so far as the rates in effect prior to January 1, 1916, are concerned.

The Florida, Alabama & Gulf Railroad is a common carrier and has been operated as such since its construction. It is now in the hands of a receiver. For the past two years its gross earnings have been less than its operating expenses. It therefore takes the position that the increase from 2 cents to $3\frac{1}{2}$ cents per 100 pounds in the charge for its service from Falco to Galliver is just and reasonable and fully justified by its financial condition. But the local rate from Falco to Galliver, as such, is not in issue. Complainant concedes that a division of 3 cents per 100 pounds, prescribed by us in *The Tap Line Case*, 31 I. C. C., 490, 492, for distances of 30 miles and over 20 miles, is probably necessary to the profitable operation of the Florida, Alabama & Gulf Railroad. The Louisville & Nashville admits that the rate from Falco to Galliver is no more than is just and reasonable. In view of these facts the question as to what is a reasonable charge for the service performed by the Florida, Alabama & Gulf need not be considered. Complainant contends that on lumber from Falco to the destinations involved herein the earnings of that line should come out of the through rates as a division for originating the tonnage.

The only other defendant represented at the hearing was the Louisville & Nashville, and its evidence was addressed largely to the reasonableness, from its viewpoint, of the basis used in constructing the through rates from Falco. Joint through rates from Falco were first published on June 7, 1915, at the solicitation of the Florida, Alabama & Gulf Railroad and for the convenience of its patrons. The basis for the through rates published has always been the Galliver combination, except to points in central freight association and

Buffalo-Pittsburgh territories since January 1, 1916, and except to points in Alabama, Kentucky, and Tennessee north of Decatur and Knoxville and to Ohio and Mississippi river crossings during the period January 1 to July 10, 1916, unintentional exceptions due to delay in publishing the tariff providing for increases in the joint through rates corresponding to the increase made on that date in the Falco-Galliver rate.

There are numerous so-called short lines traversing the blanket territory and connecting with the Louisville & Nashville, but points on none of them are accorded the blanket basis of rates. It is the general policy of the Louisville & Nashville Railroad to make the rates from points on short lines like the Florida, Alabama & Gulf Railroad higher than the rates from the junction points.

To construct through rates from points on such short lines, other than the Florida, Alabama & Gulf, varying arbitraries are added to the blanket basis applicable from the junction points, but defendant's witness was unable to state whether those arbitraries are the same as or lower than the local rates from the short-line points to the junction points. From points on the Apalachicola Northern, Marianna & Blountstown, Atlanta & St. Andrews Bay, and the Birmingham, Columbus & St. Andrews Bay railroads, the Louisville & Nashville shrinks the blanket rate 1 cent per 100 pounds on lumber traffic to points on its line south of Nashville and 2 cents to points north thereof. These four short roads connect with the Pensacola & Atlantic division of the Louisville & Nashville and run in a southerly direction to Gulf ports or to points on navigable rivers which empty into the Gulf of Mexico. There is a large movement of lumber from points on these lines to Gulf ports for export, on which the Louisville & Nashville secures no haul. The object of shrinking the blanket basis from the junction points with these short lines is to encourage the movement of that lumber to the interior. Approximately one-half of complainant's lumber moves to Pensacola for export on which the Louisville & Nashville secures a rate of only 3½ cents per 100 pounds, but so far it has taken no action similar to that taken with the four short lines above mentioned to encourage the movement of complainant's lumber to the interior.

In explanation of its participation in joint through rates on the blanket basis from points on the Gulf & Ship Island, New Orleans Great Northern, Mississippi Central, New Orleans, Mobile & Chicago, Central of Georgia, Atlantic Coast Line, and Seaboard Air Line railroads and not from Falco on the Florida, Alabama & Gulf, the Louisville & Nashville contends that the first-named lines are trunk lines and should be considered in a different category from the last-named line. It contends that these so-called trunk lines

have direct connection with one or more other trunk lines reaching the Ohio River, and that the Louisville & Nashville is therefore compelled by competition to participate in the blanket basis. On this question, however, the record does not show as to all the originating lines above named whether, in participating in the blanket basis from points thereon, the Louisville & Nashville is meeting the competition of other trunk lines, or the other trunk lines the competition of the Louisville & Nashville.

The Louisville & Nashville also contends that complainant is at a natural disadvantage on account of its mill being at the end of a 26-mile branch line instead of on a trunk line, and that defendants should not be held responsible therefor. But the Louisville & Nashville applies the blanket basis from points on its own branch lines, many of which are farther removed from the destinations in issue than is Falco, and its only witness admitted that if the Florida, Alabama & Gulf were part of the Louisville & Nashville the blanket basis would be applied from Falco.

A blanket basis of rates on yellow-pine lumber also applies from points west of the Mississippi River and south of the Arkansas River to the destinations herein involved. In southwestern producing territory, as in southeastern producing territory, distances and hauls over more than one line are largely disregarded. In *Ladd & Co. v. Gould Southwestern Ry. Co.*, 36 I. C. C., 179-183, we had before us the rates from a mill at Furth, Ark., which is located on the Gould Southwestern Railway, a short line connecting at Gould, Ark., with the St. Louis, Iron Mountain & Southern Railway. The through rates complained of from Furth to interstate destinations were made by adding an arbitrary of 2 cents per 100 pounds to the blanket basis of rates in effect from Gould. We were asked to require the establishment of the blanket basis from Furth, and the defendants presented practically the same arguments as have been advanced herein. In granting the prayer of the complaint we said:

* * * the territory in which the Gould Southwestern is located is one in which blanket rates as a rule prevail. The carriers making effective such a blanket rate can not be heard to say that it is applicable in general, but not applicable from points on a short-line common carrier, such as the Gould Southwestern. If this territory is to be blanketed, and the blanket rate is to be applied without discrimination, the Iron Mountain must expect to apply the blanket rate from points on short-line common carriers connecting with the Iron Mountain. The Iron Mountain has chosen to adopt a blanket system of making rates in this region, and under such a system distance and hauls over more than one line are, of course, in a great measure disregarded.

A similar situation was involved in *Joint Rates with the Washington Western Railway*, 41 I. C. C., 649-652. The respondent carriers

applied a group basis of rates on lumber from points on their proprietary branch lines and from points on the lines of other common carriers, but denied the same basis of rates from points on the Washington Western Railway, a short-line common carrier connecting with the Northern Pacific Railway and the Great Northern Railway at Machias and Woodruff, Wash., respectively. Among other things we held:

That respondents' denial of joint through rates on lumber and lumber articles originating at points on the Washington Western Railway while they maintain such rates from points on their proprietary branches, from points on the lines of other common carriers, and from points on the Columbia River in connection with boat lines, subjects the Washington Western Railway Company and shippers located on its line to undue prejudice and disadvantage; and that this violation of the act should be corrected.

Upon consideration of all the facts of record we find that the defendants have not justified the increased rates or the proposed increased rates on yellow-pine lumber from Falco to the destinations involved herein. We further find that the rates on yellow-pine lumber from Falco to the destinations in question are, and since January 1, 1916, have been, unreasonable and unduly prejudicial to complainant to the extent that they exceed or have exceeded the rates from Galliver by more than 2 cents per 100 pounds, and that for the future they will be unduly prejudicial to complainant to the extent to which they exceed the blanket basis of rates from Galliver to the same destinations.

The record shows that complainant has sold most of its lumber on a delivered basis; that on all shipments so sold it paid and bore the freight charges; and that on the lumber sold f. o. b. Falco it was compelled to accept a reduction in price equivalent to the prevailing freight arbitrary applicable from Falco over Galliver.

Defendants having failed to justify the increased rates in question, we find that complainant has been damaged on all shipments of lumber made by it from Falco to the destinations involved herein since January 1, 1916, to the extent that the freight charges paid and borne by it thereon were in excess of freight charges computed on 2 cents per 100 pounds over the rate contemporaneously applicable from Galliver to the same destinations. Complainant should prepare a statement of the shipments upon which reparation is due under our findings showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

An appropriate order will be entered.

43 L. C. C.

No. 8709.
INLAND NAVIGATION COMPANY, INCORPORATED,
v.
WABASH RAILWAY COMPANY ET AL.

Submitted November 10, 1916. Decided April 2, 1917.

Complainant, operating a barge line on the Mississippi River between St. Louis, Mo., and Memphis, Tenn., and New Orleans, La., seeks the establishment of through routes and joint rates with defendants on classes and commodities between certain points on their respective lines and Memphis and New Orleans; *Held:*

1. By refusing to establish through routes in connection with the navigation company and joint rates applicable thereto not higher than the joint all-rail rates between the same points in which they participate, defendants unjustly discriminate against complainant and subject traffic routed via the barge line to unreasonable prejudice and disadvantage.
2. If carriers are permitted to apply higher rates for the same service on traffic routed over connecting water lines than on traffic routed all rail, they will be in a position to destroy water competition and to deprive communities and shippers of the advantages of location upon navigable waters.
3. Defendants should establish through routes and joint rates with the navigation company via St. Louis, such rates to be no higher than those in which defendants participate, on traffic routed all rail via St. Louis or East St. Louis between the same points.

R. W. Ropiequet for complainant.

C. B. Cardy for Chicago & Eastern Illinois Railroad Company and receiver.

R. J. Kramer and *Edward Barton* for Baltimore & Ohio Southwestern Railroad Company.

N. S. Brown for Wabash Railway Company.

C. B. Sudborough for Vandalia Railroad Company.

C. P. Stewart for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

S. H. Strawn for Chicago & Alton Railroad Company.

T. M. Pierce for Terminal Railroad Association.

M. D. Smiley for Clinton Commercial Club and Clinton Manufacturers & Shippers' Association.

F. J. Danner for Davenport Commercial Club.

J. M. Fulton for Keokuk Industrial Association.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant, hereinafter called the navigation company, is a corporation operating a barge line on the Mississippi River between St. Louis, Mo., and New Orleans, La., and Memphis, Tenn. It seeks an order requiring defendants to join with it in the establishment of through routes and joint rates on classes and commodities between territories known as Illinois, central freight association, and western trunk line served by defendants, as shown in tariffs specified in paragraph 5 of the amended complaint, and Memphis and New Orleans via St. Louis, Mo. It alleges that defendants participate in joint all-rail rates between the points in question and that their failure and refusal to join with the navigation company in through routes and joint rates applicable thereto upon the same differential basis as maintained by them on similar all-rail traffic results in rates and charges on traffic routed via complainant's line which are unjust and unreasonable and subjects complainant to undue and unreasonable prejudice and disadvantage and to unjust discrimination.

The Clinton Commercial Club and the Clinton Manufacturers & Shippers Association, the Davenport Commercial Club, and the Keokuk Industrial Association entered appearances but took no further part in the hearing.

The defendants are the Wabash Railway Company, the Chicago & Alton Railroad Company, Vandalia Railroad Company, Chicago & Eastern Illinois Railroad Company and Wm. J. Jackson, receiver thereof, Toledo, St. Louis & Western Railroad Company and W. L. Ross, receiver thereof, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the Baltimore & Ohio Southwestern Railroad Company, Chicago, Burlington & Quincy Railroad Company, Chicago, Milwaukee & St. Paul Railway Company, and the Terminal Railroad Association of St. Louis.

The capital stock of the navigation company is \$4,000,000, divided into 10,000 shares of preferred and 30,000 shares of common stock, each of the par value of \$100. Approximately \$220,000 has been paid in on the preferred stock issued at the par value of \$300,000, but further payments are to be made. This stock has been issued at probably 5 or 10 per cent less than par. Of the \$220,000 paid in, \$205,000 has been spent in the purchase of barges or in arrangements for their purchase. One completed barge is now in service. Two completed hulls have been launched ready to receive the motive power. The completed barge cost approximately \$100,000, and each of the two now in course of completion will cost the same. The control of the navigation company is entirely in the hands of the common-stock holders. The holders of preferred stock have no voice or

vote in the management except upon proposals to increase the amount of preferred stock. None of the officers hold preferred stock.

The river front at St. Louis is about 20 miles long, 10 miles of which is owned by the city. There have been practically no river landing facilities at St. Louis except the paved slope from the old levee, which has been there for many years. The former landing of a sand and gravel company, 300 feet long, has been converted and improvised into a landing for the barges. A warehouse, 30 by 270 feet and one story in height, is used by the navigation company. An additional sum of \$5,000 is being spent to increase the storage space. The city has appropriated \$285,000 for a first section of a permanent municipal dock. It is the intention to have the docks when constructed connect with the railroad facilities on the front.

The navigation company has invested from \$1,500 to \$2,000 in shore equipment at St. Louis, such as conveyor, trucking equipment, tracks and platform, and other handling devices for the proper handling of freight to and from the barges. At Memphis it has an arrangement with the Rail & Storage Warehouse Company, which has its own dock and facilities for taking freight to and from storage. At New Orleans it uses the public dock.

As indicated, the navigation company now has one barge in operation, which is self-propelled and of steel construction, 240 feet long, 42 feet wide, with a solid deck and a cargo box 20 feet high. At present, owing to the inability to secure the material necessary for the construction of the type of boats they are building, provision is being made to put into service a line of barges, four or five to be operated in a tow.

Since April, 1916, when operation between St. Louis and Memphis and New Orleans was commenced, three and a half round trips have been made, and approximately 9,000 tons of freight has been handled. The time consumed for the trip from St. Louis to New Orleans and return is from 14 to 15 days.

Traffic from points north of St. Louis is usually interchanged with the carrier operating south thereof via the Terminal Railroad Association of St. Louis, hereinafter referred to as the terminal.

The terminal, which is owned by 15 trunk lines, owns or controls, through stock ownership, lease or ownership of contracts, extensive facilities at St. Louis, and serves the freight houses of nearly all the proprietary lines. It also has the control or lease of certain bridges over the Mississippi River and has a large receiving yard at Madison, Ill.

Traffic consigned to the navigation company is generally delivered to the terminal by the line-haul carrier and in turn is delivered by the terminal to the Wabash. The dock now in use is reached by a spur leading from the Wabash levee line.

Most of the traffic handled by the navigation company originates locally at St. Louis, some of which is switched to the dock in carload lots and some is drayed. If handled in switch movement, the charges therefor are absorbed by the navigation company. Traffic inbound to St. Louis with destination beyond via the navigation company is billed locally to the navigation company at St. Louis. The navigation company absorbs the switching charges of the Wabash from its connection with the terminal to the docks, and in at least one instance absorbs the local charges of the inbound carrier to the docks in order to meet the rate via the all-rail routes which similarly absorb such local charges.

This arrangement appears to be one for through carriage between the railroad and a water carrier, which subjects the water carrier to the jurisdiction of the act as provided in section 1. The action of the navigation company in transporting through interstate shipments in connection with the rail line, without filing its tariffs with the Commission, is unlawful. *Kansas City Missouri River Navigation Co. v. C. & O. Ry. Co.*, 34 I. C. C., 67.

The navigation company shows that the average unloading time for 87 cars during a representative period was approximately three hours, and that demurrage was paid upon but three of said cars, due to bad order of the tracks. The capacity of the warehouse at St. Louis is 3,000 tons. There is also trackage space which will accommodate 16 cars. Upon traffic received at the warehouse for transportation beyond by the navigation company no charge is made for storage until after 10 days. On traffic in the reverse direction no charge is made.

The defendants state that the service in delivering a shipment to the navigation company is identical with the delivery of the shipment to an industry at St. Louis, located on the tracks of a road other than the terminal, but requiring handling by the terminal. They point out, however, that in delivering to the navigation company there would be a reclaim of five days at 45 cents per car per day, equal to \$2.25, which the Wabash would make against the line-haul carrier, but which would not have to be paid where delivery is made to an outbound rail-line carrier in all-rail movement.

The defendants assert that the average cost of interchanging a car to a connecting carrier for movement beyond is 57.4 cents, whereas the average cost of handling a car to an industry within the St. Louis switching district is \$2.98 more, to which it is necessary to add the reclaim of \$2.25, making a total additional expense of \$5.23. No allocation has been made of that charge as between passenger and freight service, so it is fair to assume that the total additional charge would be somewhat less.

The navigation company transports all classes of commodities except bulk grain, coal, and certain other articles in bulk. It stands ready to file its tariffs with the Commission as soon as it is enabled to secure through routes and joint rates with the rail carriers.

Defendants do not seriously object to the establishment of through routes and joint rates in connection with the navigation company, but urge that if joint rates are prescribed they should not be lower than the aggregates of the rates of the rail lines to or from St. Louis, the barge line rate and any extra expense incurred in making the interchange. They point out that the present scales of class rates to and from Memphis and New Orleans are low, due to water competition on the Ohio and Mississippi rivers, and fear that a low basis of joint through rates with the navigation company would sooner or later result in a further reduction of the all-rail rates.

They assert that the conditions under which traffic is or may be handled in connection with the boat line are substantially different from the conditions under which it is handled all rail; that the expense of interchange with the boat line is greater than with the southern rail connections; that the traffic is more irregular than the all-rail traffic with a greater risk of delay, loss, and empty car movement; that it places the responsibility for acts of the boat line upon the initial carrier under the Carmack amendment; that it virtually leaves the control of rail line routing from point of origin to St. Louis with the boat line. All of these considerations have been brought to our attention and fully considered in previous cases, so that it will not be necessary to consider them in detail here. Suffice it to say that we do not deem them sufficient to justify denying complainant the relief prayed for.

The navigation company asks that joint rates be prescribed constructed by adding to its local rates between St. Louis and Memphis and New Orleans the differential basis which the defendants maintain on all-rail traffic between the points served by them to or from point of interchange at St. Louis or East St. Louis on traffic to or from New Orleans or Memphis.

Under the basis proposed by defendants the rail-and-water rates would be higher than the all-rail rates between the same points. If carriers were permitted to maintain rates on traffic routed over a connecting water line, which are higher than the all-rail rates, they would be in a position to destroy all water competition and to deprive communities and shippers of the advantages of location upon navigable waters. Defendants assert that New Orleans and Memphis are already adequately served by low rates compelled by water competition.

In *Decatur Navigation Co. v. L. & N. R. R. Co.*, 31 I. C. C., 281, 288, we said:

A natural waterway, improved by the expenditure of public funds, should be thrown open as far as possible to the free and unrestricted use of all those who desire to avail themselves of it. It differs materially from a privately constructed and privately owned roadbed, which, though quasi public in nature, is built by individuals or corporate interests primarily for their own gain. A navigable river is a public highway, a natural avenue of commerce, and the public interests demand that its advantages be utilized to the fullest extent.

It is true that the act to regulate commerce, in giving to this Commission authority to establish through routes and joint rates, was not intended to require us to establish such through routes and joint rates whenever requested to do so, without regard to the peculiar circumstances of each case. In view of the fact that the act was designed to promote the free movement of interstate commerce, and bearing in mind that a large river is a natural artery of commerce, it would seem that any responsible common carrier operating on the river in question would be prima facie warranted in requesting this Commission to allow that carrier to participate to the fullest possible extent in the interstate traffic originating on that river.

In *Chattanooga Packet Co. v. I. C. R. R. Co.*, 33 I. C. C., 384, the carriers maintained local and proportional rates from points of origin to Joppa, Ill., the interchange point with the boat line. The carriers were unwilling to accord to shipments delivered to the boat line the proportional rates to Joppa, but insisted upon applying the local rates to that point. We held that by restricting their proportional rates to traffic routed over their southern rail connections the defendants were unjustly discriminating against the complainant and against shippers who desired to route their goods over the complainant's boat line. It was specifically stated, however, that the defendants might make a reasonable charge to cover the additional expense, if any, of interchange with boat lines over and above the cost of interchange with southern rail carriers. In the instant case the navigation company is willing to bear the expense over and above that which would be incurred by defendants in delivering shipments to their rail connections. The navigation company seeks to have defendants accept on traffic routed by the barge line the same divisions that they receive on similar traffic handled in connection with rail carriers. The divisions accruing to defendants to St. Louis or East St. Louis are not on file with us, whereas, in the *Chattanooga Case*, *supra*, the question was the application of a proportional rate filed with this Commission. In that case we said that it was true that in one sense proportional rates are but divisions of through rates, but that it would be an unjust discrimination if a carrier should demand for the same movement over its line higher divisions of joint rates between the same points of

origin and destination when the traffic is routed via one than when it is routed by another connecting carrier.

The services performed by defendants are identical, whether shipments are delivered to the navigation company or to the rail carriers, except that when delivery is made to the navigation company there is an additional switch movement, the charge for which, as stated, the navigation company is willing to assume. Under all the circumstances, we are of opinion and find that the refusal of defendants to establish through routes with the navigation company and joint rates applicable thereto no higher than the all-rail rates between the same points in which defendants participate results in unjust discrimination against the navigation company and subjects traffic routed via its line to unreasonable prejudice and disadvantage.

We are further of opinion and so find that defendants should establish joint rates with the navigation company via St. Louis between the territories served by the defendants, as shown in tariffs specified in paragraph 5 of the complaint, and Memphis and New Orleans, which shall not be higher than those contemporaneously maintained or participated in by them via St. Louis or East St. Louis on traffic routed via rail lines between the same points. It will, of course, be necessary for the navigation company and defendants to exchange and file proper concurrences in the joint rates and to make arrangements for the publication of the necessary tariff schedules.

An appropriate order will be entered.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 886.

FRUITS FROM FLORIDA.

No. 9098.

FLORIDA GROWERS' & SHIPPERS' LEAGUE

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 458.¹

Submitted March 14, 1917. Decided April 9, 1917.

1. Proposed revision of carload and less-than-carload rates on citrus fruits from Jacksonville, Fla., applicable from Florida producing points south of Jacksonville, to points on and east of the Mississippi River and on and south of the Ohio River, exclusive of points in the Carolinas, made in general conformity with the principles and suggestions announced in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, found justified and fourth section relief granted except as to New Orleans, La., Mobile, Ala., and Brunswick, Ga.
2. Complaint alleging unreasonableness in the present proportional rates from Jacksonville to certain of the more important southeastern points and to Ohio River points involved in the suspension proceeding, mainly upon a comparison of those rates with the other components of the through rates from the Florida producing points south of Jacksonville, found not sustained.

R. Walton Moore and Frank W. Gwathmey for the respondents and defendants.

Charles Conrads and Arthur B. Hayes for the protestants and complainants.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

In the suspension proceeding the respondents propose to realign their carload and less-than-carload proportional rates on citrus fruits, including pineapples, oranges, grapefruit, and tangerines, from Jacksonville, Fla., to points on and east of the Mississippi and on and south of the Ohio River, excluding points in the Carolinas, applicable on shipments originating in Florida south of Jack-

¹ The report also embraces portions of Fourth Section Applications Nos. 542, 601, 703, 782, 799, 972, 1021, 1530, 1543, 1573, 1952, 2029, 2043, 2045, 2133, 3692, 3965, and 4003.

sonville. The through rates from the producing points south of Jacksonville are made by adding together proportional rates to and from Jacksonville, and increases in the proportional rates north of Jacksonville would therefore result in increases in the through rates.

The less-than-carload rates are made 150 per cent of the carload rates and do not appear to be primarily involved. Shipments of oranges in carloads appear to present the chief issue.

In the formal complaint the allegation is that certain of the proportional rates from Jacksonville which the carriers propose to increase in the suspension proceeding are unreasonable, and that allegation if sustained would result in a reduction of the present through rates. The points of destination involved are 33 of the more important basing and common points.

There were also set for hearing with the proceedings named portions of certain fourth section applications by which the carriers ask permission to continue to charge for the transportation of citrus fruits and pineapples from Jacksonville and other points in Florida to points of destination specified in the formal complaint rates which are lower than the rates contemporaneously maintained on like traffic from or to intermediate points.

The allegation in the formal complaint is based largely upon a comparison of the rates attacked with the proportional rates of the defendants for like distances from the producing points to Jacksonville; that is, a comparison of one component of the through rates with the other. The proportional rates from the producing points to Jacksonville are mileage rates and were prescribed by us in 1911 in *Florida Fruit & Vegetable Shippers v. A. C. L. R. R. Co.*, 22 I. C. C., 11. In 1910 in *Florida Fruit & Vegetable Asso. v. A. C. L. R. R. Co.*, 17 I. C. C., 552, we prescribed proportional rates from Jacksonville to points north of the Ohio River, and the carriers' earnings north of the river accruing under those rates are also compared with the rates from Jacksonville to the southeast, and to Ohio River points, here attacked.

The defendants suggest that the mere fact that the proportional rates from the producing points to Jacksonville were established for this long-haul traffic to points north of the Ohio River affords no good reason why they should be accepted as a yardstick for measuring the proportions north of Jacksonville of through rates from the same producing points to this much nearer territory, when we have repeatedly held that rates may properly be higher relatively for shorter than for longer hauls.

Another point which the defendants urge is that the transportation from the producing points to Jacksonville is usually over only

one line, frequently in trainloads, while the transportation beyond Jacksonville here involved is in many cases over two or more lines, generally in only one or a few car lots.

But the complainants assert that the traffic in citrus fruits has increased since the earlier cases were decided; that the center of production has been moved to a point much farther south, to the advantage of the carriers in increased hauls and increased rates; and that the minimum was increased in 1912 from 250 to 300 boxes. They present figures purporting to show that the total shipments from Florida of oranges, grapefruit, and tangerines were 6,130,798 boxes for the season 1909-10; 4,360,499 boxes for the season 1910-11; 4,708,850 boxes for the season 1911-12; 8,125,465 boxes for the season 1912-13; 7,651,514 boxes for the season 1913-14; 9,573,011 boxes for the season 1914-15; and 8,205,434 boxes for the season 1915-16; and they estimate that 12,000,000 to 15,000,000 boxes will be grown annually within the next three years.

The complainants cite for comparative purposes the rates on peaches in carloads from Fort Valley, Ga., to various destinations. Peaches move always under refrigeration, while citrus fruits to the southeast are not usually iced, although perhaps 80 per cent move in refrigerator cars. The showing with respect to the peach rates consists merely of the filing of the comparison of the peach and citrus fruit rates and a general statement of opinion as to the conclusions to be properly drawn therefrom. It does not comprehensively compare the relative conditions of transportation and marketing affecting peaches and citrus fruits. The defendants present comparisons of the rates on peaches from Fort Valley and other Georgia producing points to southeastern points with the rates on citrus fruits which purport to show a relative situation favorable to their contentions.

The proportional rates from the producing points to Jacksonville were the subject of three comprehensive investigations extending intermittently over the period from 1908 to 1911 and were made to meet, so far as consistently within our power, a serious commercial and competitive exigency which then confronted the Florida growers. In the first proceeding, in 1908, *Fla. Frt. & Veg. Shprs. Protect. Assn. v. A. C. L. R. R. Co.*, 14 L. C. C., 476, we found that the rates were not shown to be unreasonable; in the second we ordered reductions in the rates from Florida East Coast stations on pineapples; and in the third we ordered reductions in the rates from Florida East Coast, Atlantic Coast Line, and Seaboard Air Line stations on oranges and other citrus fruits as well as on pineapples. The latter two cases are those which are first cited herein. The reductions ordered were induced in part by the fact that the rates under review

were any-quantity rates, and that ordinarily carload rates less than the any-quantity rates were then, as now, established for traffic moving heavily in carload quantities.

We do not mean to suggest that these mileage rates as then established were made too low, but only that the scale was made as low as it could consistently be, in justice to the carriers.

After all, the real question is the reasonableness of the through rates from the producing points south of Jacksonville to the points here involved. If the proportional components of those rates north of Jacksonville are reasonable, the complainants are benefited rather than prejudiced by the addition thereto of proportional rates relatively lower from the producing points to Jacksonville. In this respect the case differs from the case that might arise if an undue discrimination were charged against the complainants in favor of competitors shipping under the lower rates. Upon the whole we do not find that the rates attacked or the through rates of which they form a part are unreasonable, and the complaint will therefore be dismissed.

In the suspension proceeding both increases and reductions are proposed. The rates to-day to points intermediate to the more important base points like Atlanta and Birmingham are usually made by adding together the rate to the base point and the rate from the base point back to the intermediate point, and through rates to such intermediate points are not published by the respondents other than the Atlantic Coast Line, and the Illinois Central as to certain divisions, except to the more important of such points. In the proposed tariff a full line of rates is provided by all the respondents to the intermediate as well as to the base points. The rates to some of the larger base points are increased. The rates to others are left unchanged. The rates to the intermediate points are generally reduced, in some cases by large amounts.

The rates are stated in box units of an estimated weight provided by the tariffs of 80 pounds and are subject to a minimum of 300 boxes. An increase of 2 cents is made to Atlanta, $8\frac{1}{2}$ cents to Macon, 4 cents to Montgomery, 5 cents to Meridian, and 5 cents to New Orleans and Mobile. No change is made to Augusta, Knoxville, Chattanooga, Nashville, Birmingham, Vicksburg, Memphis, Evansville, Louisville, or Cincinnati, although an increase of 7 cents was made to Birmingham in 1913. A reduction of 2 cents is made to Cairo. Reductions are also made to other towns throughout the territory affected of sufficient population to receive citrus fruits in carloads.

The general plan of the readjustment is to grade the rates up from 23 cents at Waycross, in southeastern Georgia, near Jacksonville, into the Chattanooga, Atlanta, and Ohio and Mississippi river

rates of 35 cents, 30 cents, 46 cents, and 42 cents, respectively. The 46-cent rate applies to Louisville and Cincinnati. The rate to Evansville and Cairo will be 48 cents. To Cincinnati, New Orleans & Texas Pacific Railway stations north of Chattanooga the Cincinnati rate is applied; to Southern Railway stations west of Chattanooga the Memphis rate; to Illinois Central and St. Louis & San Francisco stations west of Birmingham the Memphis rate; to Western Railway of Alabama, Southern, and Queen & Crescent stations west of Meridian the Vicksburg rate; to Meridian 2 cents and Selma 9 cents under the Vicksburg rate; to Mobile & Ohio stations west of Montgomery the Memphis rate from points west of Tuscaloosa and 2 cents under the Memphis rate from Tuscaloosa and intermediate points; to Nashville, Chattanooga & St. Louis stations beyond Chattanooga the Nashville rate of 42 cents to points south of Nashville and the Hickman, Ky., rate of 48 cents to points beyond Nashville; to Louisville & Nashville stations intermediate to New Orleans the Vicksburg rate of 42 cents, or 7 cents higher than to New Orleans; and to Louisville & Nashville stations intermediate to Mobile via River Junction 2 cents higher than the 35-cent rate to Mobile and New Orleans.

The protestants object to the readjustment of the rates to the intermediate points as being too precipitately upward beyond certain of the base points and as blanketing too great an expanse of intermediate territory under the Ohio and Mississippi river rates.

The respondents point to the substantial reductions in the rates to the points intermediate to the river gateways which will be brought about by the change from the combination on the river gateways or other basing points to the basis applicable to the river gateways, which they claim will result in rates that are reasonable *per se* to the intermediate points but are low when applied to the river gateway traffic, having been made originally on a basis to enable the Florida growers to meet the competition of the California fruit at the river gateways and at points beyond; and not being here increased.

In making the proposed readjustment the respondents have been guided by the principles announced by us in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, which involved rates on classes and commodities generally into the southeast. The class rates from Jacksonville to the points here involved were readjusted January 1, 1916, as a result of that decision. The proposed rates on citrus fruits are not higher to the intermediate points than to the base points on reasonably direct routes except in a few instances to be later referred to more in detail.

To correct the numerous fourth section departures which existed prior to our findings in the case cited was one of the purposes of the 43 I. C. C.

proposed revision. Another was to comply with requests from certain of the protestants for the publication of specific through rates to some of the more important intermediate points, about 80 in number. It was not the purpose to increase revenues, according to the respondents.

Considerable is said by both parties to the record concerning the effect upon the respondents' revenues of the proposed revision. It is the contention of the protestants that the fourth section realignment has not been fairly made and that it will result in the aggregate in more increases than reductions because the increases are to the more populous points of heavy tonnage while the reductions are to the less important points of light tonnage. It is stated that ordinarily carload shipments of oranges are not made to points of less than 3,500 people except during the heavy shipping period just preceding the holidays, because the fruit will not keep longer than about three weeks, thereby differing from the staple articles of groceries in that regard. One witness testified that carload shipments of oranges could not safely be made without advance payment to points of less than 10,000 people. The contention therefore is that the readjustment will as a whole be advantageous to the respondents and disadvantageous to the protestants.

In the view of the respondents the readjustment by drawing closer together or to a common level the base and intermediate point rates will have the effect of stimulating the growth and development into jobbing centers of the intermediate points and of consequently shortening the respondents' outbound distributing hauls and materially decreasing their revenues, signs of which have already become manifest with respect to citrus fruits as a reflection of the similar effect upon the intermediate points of the general fourth section revision already made of class and commodity rates, although the fourth section revision of the citrus fruits rates has not yet been made.

Both parties to the record present figures bearing upon this question of revenues. The respondents assert that the revenues of the Atlantic Coast Line for the period from November 1, 1915, to May 1, 1916, would have been increased from \$200,331.47 to \$205,207.75, or \$4,876.28, and that its revenues for the period from October 13, 1916, to December 31, 1916, would have been reduced from \$171,879.90 to \$171,582, or \$295.90; that the revenues of the Central of Georgia for the period from October 1, 1916, to December 31, 1916, would have been increased from \$93,006.60 to \$93,039, or \$32.40; and that the revenues of the Southern Railway on the 177 cars shipped by it to points on its own line for the period from October, 1915, to March, 1916, would have been increased \$51.15; these figures being

based on a check for the periods noted of actual shipments to points in the territory involved and which were not reconsigned to points beyond that territory.

The figures presented by the protestants purport to show an entirely different result—that the revenues of the respondents on the 173,555 boxes of oranges shipped by certain of the larger Florida shippers, including the Florida Citrus Fruit Exchange, during the season 1915, as to which changes in rates are proposed and which represent 50.1 per cent of the total shipments of these concerns, would have been increased from \$52,124.45 to \$57,317.60, or \$5,193.26, which is 9.96 per cent; and that the revenues on the 64,117 boxes of oranges shipped by the Florida Citrus Fruit Exchange during the same season would have been increased \$2,054.40; these figures being also based on a check of actual shipments for the periods noted.

In view of these conflicting claims, said each to be based on a check of actual shipments, it seems difficult to determine with definite assurance of accuracy just what the effect of the proposed revision would be, either from the standpoint merely of rerating actual past shipments or of speculating in addition upon a changed volume of traffic at the intermediate and base points.

The respondents would explain this discrepancy in figures by the assertion that the figures presented by the protestants are those for the larger growers and shippers who maintain their own sales agencies or operate through brokers only in the larger towns and do not solicit through traveling salesmen the trade of the smaller intermediate points as many of the smaller growers do whose shipments doubtless were included in the figures submitted by the respondents. In support of this assertion they cite that most of the increases shown by certain of the protestants' exhibits arise from shipments to Atlanta, Selma, and New Orleans.

But whatever the effect of these comparisons and the reasons therefor, the controlling question before us is whether the proposed rates have been justified by the tests of transportation considerations usually employed as proper and controlling. A resulting increase in the respondents' revenues can not alone be successfully urged against the propriety of the proposed rates even assuming that such an increase would result. We may consider within reasonable limitations the state of an industry affected, but we can not do this to an extent unduly prejudicial to the carriers. We made the proportional rates from the producing points to Jacksonville as low as we consistently could in the case hereinbefore cited as already explained, and we do not feel that in justice to the carriers we should here extend that basis or its approximate level to the transportation north of Jacksonville to the points here involved and to the resulting through rates if the pertinent facts adduced by the respondents upon the hearing seem

plainly to argue against it. The average haul from the producing points to all destinations is substantially longer than the average haul from those points to the destinations here involved, and the volume of the citrus fruit traffic to other destinations to which citrus fruits move from the producing points is much greater than that to the destinations which we are here considering.

The protestants describe at some length the present unfavorable state of the citrus fruit industry, resulting in part from the heavy and increased expense in recent years of fertilizing, growing, spraying, picking, and packing, and refer to the total absence of profits in many cases. But this condition is not shown to be due to any unreasonableness of the freight rates. The general conditions affecting the prosperity of the citrus fruit industry are set forth at considerable length in the earlier cases cited.

The chief competition of the protestants is with the California fruit and is met principally in the territories beyond the Ohio and Mississippi rivers, though to some extent in the southeast. This California competition in the southeast is of a limited kind, as a comparison of the rates from the two producing sections will show.

The Florida growers also meet some competition with fruit from the Isle of Pines and from Alabama and Louisiana growers in the vicinity of New Orleans and Mobile, but this competition is not shown to be of a very extensive or particularly troublesome kind except that which is met in the market at New Orleans during the period when the Louisiana oranges are coming in. The record indicates that the Florida fruit dominates the market at the points here involved.

The record impels strongly to the conclusion that in view of the nature of this traffic and the equipment and service required in its transportation the proposed rates have been justified.

Citrus fruits are rated second class, any quantity, in the southern classification, and third class is their lowest rating in any of the three classifications. The proposed rates are in practically all cases lower than the fifth-class rates in carloads and approximate in many cases the sixth-class rates. The suspended rate to Atlanta is 0.4 cent lower than the sixth-class rate, computed on an 80-pound basis, from Jacksonville to that point.

The proposed rates on the whole compare favorably with the rates on oranges from the California groves for similar distances over lines of greater density of tonnage than the respondents' lines and for one-line hauls and with the rates on the comparatively light volume of orange shipments from New Orleans and Mobile into this territory.

The proposed rates, although somewhat higher, also compare favorably with the rates from Jacksonville to southeastern points on

commodities of a much hardier nature and of heavy loading and less exacting equipment and service requirements than citrus fruits, including such articles as petroleum, canned goods, stoves, etc., some of which move in substantial volume.

The transportation of the Florida citrus fruits into this territory here involved is mainly in refrigerator cars. Although but a very small percentage of shipments destined finally to the southeastern points are made under ice, the shippers usually demand the refrigerator equipment because of their common practice of selling shipments while en route to base points or reconsigning points and reconsigning them thence to points beyond the Ohio and Mississippi rivers of sufficient distance to require icing. The records of the Atlantic Coast Line show that 83 per cent of its shipments during the 1915-16 season were made in refrigerator cars. No extra charge is made to the shipper for this equipment for shipments not made under ice. The refrigerator cars are much heavier than the ordinary box or ventilator cars and are usually returned empty. To supply them in sufficient numbers at the points desired and when desired by the various shippers presents quite a problem on account of the shippers not knowing with certainty in advance just how many cars they will need and exactly when they will need them. This necessitates collecting and parking the cars in large numbers at the larger and more convenient points of sufficient yardage facilities and moving them thence to the various producing points as needed. All of these considerations the respondents contend combine to make the handling of the citrus fruit crop an expensive and exacting process.

Reconsignments are made without charge (except "pocket" reconsignments involving back hauls from branch lines) and without restriction as to number, as many as eight being sometimes made of a single car. The record shows that 130, or 74 per cent, of the 175 cars billed over the Central of Georgia to Atlanta during the period from October 1 to December 31, 1916, were reconsigned to 83 destinations, as near to Atlanta as Chattanooga, as far west as Pueblo, Colo., and as far east as Boston, some of the shipments being reconsigned to New Orleans and involving an out of line haul of 300 or 400 miles, although the New Orleans rate applicable over the direct routes was applied.

Altogether the proposed rates seem warranted for this service. Adding to them the proportional rates from the producing points to Jacksonville will result in through rates which seem on the whole to be warranted for the through service.

Upon consideration of all the facts of record we conclude that the proposed rates have been justified.

Referring to the fourth section applications set for hearing in connection with this proceeding, it is stated that except in a few instances in which the departures will be corrected the rates follow the principles and suggestions announced by us in the fourth section proceeding cited and are not higher to intermediate points than to the base points except where the intermediate points are on circuitous lines to the base points of 15 per cent or more greater distance than the direct routes and except also the less-than-carload rates to points intermediate to the south Atlantic ports and the carload rates to points intermediate to New Orleans and Mobile over the direct routes.

Following the general rule of the Commission applicable in such cases the carriers whose lines are 15 per cent or more longer than the direct routes will be granted authority to meet the rates of the direct lines and to maintain higher rates at intermediate points, provided that the rates to the intermediate points do not exceed the rates herein authorized to those points and that they do not exceed the lowest combinations.

Boat lines carry citrus fruits from Tampa to New Orleans and Mobile at rates lower than the proposed rate of 35 cents from Jacksonville, but so far as this record shows there is no movement of citrus fruits by boat to these points from Jacksonville and it does not appear from this record why the proposed rail rate to these points from Jacksonville is necessitated by the lower water rates from Tampa.

It also appears that boat lines carry citrus fruits from Jacksonville to Savannah at the same rate as that here proposed between those points by the rail lines, but there is no regular boat line in operation from Jacksonville to Brunswick, and so far as this record discloses there is no movement of citrus fruits by boat between those points.

In view of the fact that water competition exists with respect to citrus fruits shipped from Jacksonville to Savannah the carriers will be authorized to charge lower rates to that point than to intermediate points, upon the same proviso affecting the intermediate points rates as stated above in connection with the intermediate point rates of circuitous lines, but fourth section relief with respect to the rates to New Orleans, Mobile and Brunswick, and all other and further relief prayed in said application with respect to the rates involved herein will be denied.

Our orders will provide accordingly.

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No. 8622.¹

LA CROSSE SHIPPERS' ASSOCIATION, FOR CARGILL
COAL COMPANY ET AL,

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

FOURTH SECTION APPLICATIONS Nos. 39 AND 2874.

Submitted October 17, 1916. Decided April 2, 1917.

1. Rates on bituminous coal in carloads from various producing points in West Virginia to La Crosse, Wis., not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial.
2. Carriers authorized to continue and to establish the same rates on bituminous coal from certain Lake Michigan ports to Eau Claire, Chippewa Falls, Menomonie Junction, and Menomonie, Wis., as are in effect from Duluth, Minn., to the same destinations, and to continue higher rates to certain intermediate points on their lines, provided that the rates to intermediate points from Lake Michigan ports shall not exceed the rates on like traffic from Duluth and that present rates to said intermediate points are not exceeded.
3. Rates on bituminous coal in carloads from various producing points in Illinois and from St. Louis, Mo., and points taking the same rates to La Crosse, Wis., found to have been justified by defendants.
4. The requirement of a differential between screenings and other sizes of bituminous coal not found to be justified.

S. J. Bolton and W. W. West for complainants.

J. W. Clark for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

K. F. Burgess and W. A. Holley for the Chicago, Burlington & Quincy Railroad Company.

J. N. Davis and C. A. Lahey for Chicago, Milwaukee & St. Paul Railway Company.

R. H. Widdicombe and A. F. Cleveland for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

These two cases, which were heard consecutively and will be disposed of in one report, relate to rates on bituminous coal in carloads

¹ This report also embraces complaint in No. 8652, Same v. Cleveland, Cincinnati, Chicago & St. Louis Railway Company et al.

to La Crosse, Wis. The complaints were filed by the La Crosse Shippers' Association on behalf of various shippers of coal located at La Crosse. The complaint in No. 8622, filed January 27, 1916, involves rates from producing points in the state of West Virginia. The complaint in No. 8652, filed February 12, 1916, involves rates from producing points in the state of Illinois and from St. Louis, Mo., and points taking the same rates. Both complaints challenge the rates as unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act. Both complaints contain requests for reparation, but the prayer for reparation in No. 8652 was abandoned at the hearing.

The complaint in No. 8622, moreover, alleges a violation of the fourth section of the act in that the rates involved exceed the rates to Red Wing, Minn., Eau Claire, Menomonie, and Chippewa Falls, Wis. Accordingly those portions of Fourth Section Applications Nos. 39 and 2874, filed respectively by the Chicago & North Western and by the Chicago, Milwaukee & St. Paul railways, by which authority is sought to charge rates on bituminous coal, in carloads, from Chicago, Ill., Milwaukee, Manitowoc, and Sheboygan, Wis., to Red Wing, Eau Claire, Menomonie, Menomonie Junction, and Chippewa Falls lower than the rates contemporaneously maintained on like traffic to La Crosse, and other intermediate points, applicable on bituminous coal originating at points in West Virginia, were set for hearing with the complaint. That portion of application No. 2874 relating to lower rates to Red Wing than to intermediate points was considered in *Coal to Red Wing, Minn.*, 41 I. C. C., 309, and fourth section relief denied. There was assigned for hearing at the same time application No. 2980 of the Chicago, Milwaukee & St. Paul, but it appears that this application did not cover rates involved herein.

La Crosse is on the east bank of the Mississippi River 263 miles northwest of Chicago, 196 miles west of Milwaukee, 282 miles south of Duluth, Minn., and 131 miles southeast of St. Paul, Minn. It is served by the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee; the Chicago, Burlington & Quincy Railroad, hereinafter called the Burlington; and the Chicago & North Western Railway, hereinafter called the North Western. Rates are stated in this report in dollars per net ton on the carload basis.

NO. 8622.

Shipments of bituminous coal from mines in West Virginia to La Crosse may move all rail via Chicago or rail and car ferry via west bank Lake Michigan ports, namely, Milwaukee and Manitowoc.

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There are no joint rates in effect from the mines in West Virginia to La Crosse, the through charges being the lowest combination of local or proportional rates applicable either via Chicago or via the Wisconsin ports enumerated above. The proportional rate on the traffic involved over the Burlington from Chicago to La Crosse is \$1.35; the rates over both the Milwaukee and the North Western from Chicago and west bank Lake Michigan ports to La Crosse are the same.

Complainant confines its evidence to the rates from Chicago and west bank Lake Michigan ports to La Crosse, contending that \$1.25 would be a reasonable rate from all the gateways involved. In support of this contention an exhibit is submitted showing the average distance from Chicago and Milwaukee to La Crosse over the Milwaukee, the North Western, and the Burlington to be 207 miles, and the average distance from the same points to Red Wing over the Milwaukee and the Chicago Great Western Railroad to be 354 miles. Based on these distances complainant computes the average ton-mile revenue on coal to La Crosse to be 6.52 mills and to Red Wing 3.67 mills. It is observed, however, that complainant's figures with respect to Red Wing are derived by the use of a rate of \$1.30, no longer in effect. The rate now applicable on bituminous coal over the Milwaukee from Chicago and Milwaukee to Red Wing is \$1.60, which yields ton-mile earnings in excess of complainant's figures. Complainant also offers a statement showing car-mile earnings on bituminous coal from Chicago, Milwaukee, and Manitowoc to La Crosse. Two retail coal dealers and one manufacturer, all located in La Crosse, testified as to the amount of coal they used annually and the payment of freight charges. No substantial evidence is offered to show wherein the rates assailed contravene sections 2 and 3 of the act. Apparently complainant's allegations with respect to these sections are predicated upon the departures from the rule of the fourth section hereinafter discussed.

Defendants object to the sufficiency of complainant's evidence because limited to those factors of the through charges applicable beyond Chicago and west bank Lake Michigan gateways. Complainant in this case brings in issue the charges applicable to the through shipments from the mines in West Virginia and all the participating carriers appear to be named as defendants. Defendants' objection is not sustained. *Stevens Grocer Co. v. St. L., I. M. & S. Ry. Co.*, 42 I. C. C., 396.

Defendants testify that rates on coal from eastern points of origin to destinations in Wisconsin in practically all instances are made on a combination basis via Chicago, at which point they are compelled to

meet the rates maintained by carriers serving the coal mines of Illinois and Indiana which produce an enormous amount of bituminous coal. The keenness of this competition at Chicago, it is asserted, has compelled the establishment of rates on coal from points in Ohio, Pennsylvania, West Virginia, and Kentucky to Chicago on an exceedingly low basis. Moreover, the Chicago rate is applied via the cross-lake routes of the Grand Trunk, Pere Marquette, and Ann Arbor railways proportionally from Manitowoc and Milwaukee. It is contended that the normal basis of rates on coal into La Crosse would be the aggregate of the locals to and from Chicago.

Defendants contend, furthermore, that the present through charges on the traffic involved are 5 cents per ton below the normal basis. It is testified that in accordance with the permission granted in 1915 *Western Rate Advance Case*, 35 I. C. C., 497, 611, the local rate on bituminous coal from Chicago to La Crosse was increased from \$1.35 to \$1.40 and applications filed with the Railroad Commission of Wisconsin for authority to publish from Milwaukee, Sheboygan, Manitowoc, and Green Bay to La Crosse a rate on coal the same in amount, under the Wisconsin law no increase in intrastate rates being allowed without the consent of the state commission. This is stated to be the reason for the continuance of the rate of \$1.35 from the Wisconsin ports and made possible the protection of a rate from the eastern mines to La Crosse 5 cents per ton less than could be applied via Chicago. On traffic to La Crosse the Milwaukee and the North Western have Milwaukee as a gateway in addition to Chicago, but the Burlington is limited to Chicago. In order to participate in the coal traffic on the same basis of through charges as was applicable over the Milwaukee and the North Western via Milwaukee the Burlington established the present proportional rate of \$1.35. Desiring to engage in some of the traffic from the east to La Crosse via the Chicago gateway the Milwaukee and the North Western subsequently met the Burlington's proportional rate of \$1.35 from Chicago. It is stated, however, that if the Railroad Commission of Wisconsin acts favorably upon their applications, the North Western and the Milwaukee will cancel the present rate of \$1.35 and establish a rate of \$1.40 from Chicago and Milwaukee to La Crosse.

The following table, submitted as an exhibit by defendants, shows the distances, rates, and revenues per ton-mile from three representative eastern producing districts to La Crosse in comparison with the distances, rates, and revenue per ton-mile from the same points of origin to points in Minnesota, Iowa, and Missouri:

	Distance.	Rate.	Per ton-mile.
	Miles.		Miles.
Pittsburgh district to La Crosse.....	750	\$2.25	4.20
.....	800	2.40	4.47
.....	785	2.25	4.14
.....	781	2.20	4.23
.....	843	2.45	2.89
.....	810	2.30	4.67
.....	891	2.50	2.93
.....	903	2.65	2.73
.....	920	2.80	2.80
.....	712	2.50	4.91
.....	784	2.65	4.46
.....	741	2.60	4.72
.....	781	2.50	4.48
.....	853	2.65	4.37
.....	810	2.50	4.32
.....	747	2.50	4.68
.....	737	2.40	5.02
.....	684	2.30	5.11
.....	786	2.70	4.79
.....	766	2.55	5.02
.....	728	2.70	5.11

Another exhibit of record filed by defendants shows that the rates and earnings per ton-mile on the traffic involved herein compare favorably with the rates and earnings per ton-mile on coal traffic from the same points of origin named in the foregoing table to Milwaukee and to Dubuque and Clinton, Iowa, at which points it is asserted transportation conditions are such as to justify a lower basis or rates than to La Crosse.

Upon the facts of record we find the rates challenged have not been shown to be unreasonable, unjustly discriminatory, or unduly prejudicial, and the complaint will be dismissed.

Coming now to those portions of Fourth Section Applications Nos. 39 and 2874 remaining for consideration, the situation appears to be substantially similar via both the North Western and the Milwaukee, and the petitions will be considered together. The phrase "Lake Michigan ports," as hereinafter used, includes only Milwaukee, Sheboygan, and Manitowoc. In justification of their lower rates to Eau Claire, Menomonie, Menomonie Junction, and Chippewa Falls than to intermediate points, petitioners state that the rates to these destinations, which are in closer proximity to Lake Superior ports than to Lake Michigan ports, are made the same as the rates applicable on coal originating in West Virginia and moving via Duluth, Minn., and other Lake Superior ports. Rates from the latter ports are normally lower than rates from Lake Michigan ports, and petitioners testify that they have been compelled to reduce the rates from Lake Michigan ports in order to secure an equality with Lake Superior ports.

The following table shows the distances from Duluth and Superior, representative Lake Superior ports, via the route of the Chicago, St.

Paul, Minneapolis & Omaha and the North Western railways; also the distances from Milwaukee, Sheboygan, and Manitowoc:

From—	To Eau Claire.	To Chippewa Falls.	To Menom- onie Junction.	To Menom- onie.
Duluth.....	155	148	181	184
Superior.....	154	144	177	180
Milwaukee.....	238	248	267	264
Sheboygan.....	253	263	277	274
Manitowoc.....	258	268	283	279

The distances to the destinations enumerated above via the route indicated from the west bank Lake Michigan ports are in every instance 50 per cent or more greater than the distances to the same points from Duluth and Superior.

The rate from Lake Superior ports to the points named in the foregoing table and the rate which petitioners desire to continue from Lake Michigan ports to the same points is \$1. The highest rate to any intermediate point is \$1.40. The rates to intermediate points approximately the same distance from Lake Michigan ports that the competitive points named above are from Duluth do not exceed the rate of \$1 applicable at said competitive points. It appears, however, that to some of the intermediate points on the Chicago, St. Paul, Minneapolis & Omaha it is desired to continue higher rates from Lake Michigan ports than from Duluth to the same points, as will be seen from the following table:

To—	From Duluth, Superior.	From Milwan- kee, She- boygan, Manito- woc.	To—	From Duluth, Superior.	From Milwan- kee, She- boygan, Manito- woc.
Menomonie Junction.....	\$1. 00	\$1. 00	Fairfield to Warren	\$1. 40	\$1. 40
Eau Claire.....	1. 00	1. 00	Valley Junction.....	1. 40	1. 00
Rusk.....	1. 00	1. 40	Wyeville.....	1. 40	1. 00
Elk Mound.....	1. 00	1. 40	Camp Douglas.....	1. 40	1. 00
Altoona.....	1. 20	1. 40	Elroy.....	1. 40	1. 00
Fall Creek.....	1. 25	1. 40	Troy to Cedarhurst.....	1. 40	1. 40
Rodell.....	1. 25	1. 40	Marshfield.....	1. 40	1. 00
Augusta.....	1. 25	1. 40			

If the rates from Duluth are met at Eau Claire and Menomonie Junction, there appears to be no reason, so far as the record discloses, for not meeting them at the intermediate points.

Upon the facts of record we find that petitioners should be permitted to continue and to establish the same rates on bituminous coal from the Lake Michigan ports under consideration to Eau Claire, Chippewa Falls, Menomonie Junction, and Menomonie as are in effect from Duluth to the same destinations, and to continue higher rates

to certain intermediate points on their lines, provided that the rates to intermediate points from Lake Michigan ports shall not exceed the rates on like traffic from Duluth and that the present rates to said intermediate points are not exceeded.

NO. 8652.

The gravamen of complainant's contention is that the present rates on Illinois coal both lump and screenings to La Crosse are unreasonable when compared with rates to other points in the same territory, particularly St. Paul. No testimony is adduced to show specifically the form of the alleged violation of sections 2 and 3. Complainant rests its allegation on the statement that "the discrimination under sections 2 and 3 is that for the same service over the same lines for approximately the same distance, and in cases less, the rates on coal from Illinois points to La Crosse are greater than they are to St. Paul." The Commission is requested to reduce the rates involved 15 cents per ton from all the points of origin involved and to establish a differential in rates of 15 cents per ton between screenings and other grades of bituminous coal. Screenings is defined as coal passed through screens not exceeding $1\frac{1}{2}$ inches between bars or through 2-inch round holes. As the rates assailed herein were increased subsequent to January 1, 1910, defendants have the burden of proving them just and reasonable.

For rate-making purposes coal mines in Illinois are grouped. The northernmost group is in the vicinity of La Salle and Streator, Ill., and is familiarly known as the third vein or northern Illinois district. The rate from this group to points in Minnesota and Wisconsin is the base rate upon which rates from the other groups are made by the addition of certain fixed arbitraries. The rate to La Crosse from the northern Illinois district is \$1.40; the differential of mines in the central or so-called Springfield district over the northern district is 40 cents per ton, and of those in the southern district 70 cents per ton. As no attack is made upon this system of grouping mines in Illinois or upon the existing relationship between the rates from the various groups, the rate of \$1.40 from the northern Illinois group may be considered as typical of the situation presented. The Burlington serves points in all Illinois groups; the North Western points in the northern Illinois and Springfield groups, and the Milwaukee points in the northern Illinois group. Most of the coal from the mines in Illinois to La Crosse is hauled by the Burlington. During 1915 it handled approximately 1,900 cars out of an approximate total via all lines of 2,000 cars.

The record discloses that the rates on coal to La Crosse from points of origin in the several groups described above are in every instance

lower than the rates to St. Paul from the same points. The following table, taken from an exhibit submitted by defendants shows the rate changes to La Crosse and to St. Paul during the past six years:

To—	1910	1915	1916
La Crosse.....	\$1.35	.....	\$1.40
St. Paul.....	1.40	\$1.50	1.60

It will be observed that the successive changes have resulted in increasing the spread of rates between La Crosse and St. Paul. The present rate of \$1.60 to St. Paul applies to lump coal; the rate to St. Paul on screenings is \$1.46. The rate of \$1.40 to La Crosse applies on all grades of coal.

The evidence offered by complainant consists chiefly of a number of exhibits in which comparisons are made of the rates, distances, and ton-mile earnings to La Crosse from various producing points in Illinois with the rates, distances, and ton-mile earnings to St. Paul from the same and other points; comparisons with rates, distances, and earnings to various points in Wisconsin, Iowa, and Minnesota; and comparisons with rates to points in Mississippi Valley territory from mines in Illinois, Kentucky, and Alabama. In a number of instances complainant's exhibits are based upon comparisons of rates from one group of origin to St. Paul with rates from points in a different group of origin to La Crosse. As complainant does not challenge the differential adjustment of rates from the Illinois coal fields, such comparisons are of no probative force in this proceeding. As a matter of fact, the rates on coal from points in Illinois to La Crosse are in every instance lower than the rates to St. Paul, provided comparisons are made between points in the same groups of origin. In one exhibit complainant shows that from certain selected points in Illinois to La Crosse via the routes indicated the percentage of mileage in Illinois is greater than in Wisconsin, while the contrary is true in some instances with respect to hauls to St. Paul. On the assumption that the density of tonnage in Illinois is greater than in Wisconsin, it is argued this exhibit indicates that the rates to La Crosse should be on a considerably lower basis than the rates to St. Paul. However, too few aspects of the situation are presented to justify complainant's conclusions.

The following table submitted by defendants shows representative points in the northern Illinois group from which the base rate is applicable, together with various routes, distances, and per ton-mile earnings; the earnings based on the rates which complainant seeks to have established are also given:

To La Crosse from—	Dis- tance.	Current rate.	Per ton- mile.	Claimed.			
				Soft coal.	Per ton- mile.	Fine coal.	Per ton- mile.
C., B. & Q.:	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>
Chicago.....	298	\$1.40	4.69	\$1.25	4.19	\$1.10	3.69
Ladd.....	294	1.40	5.98	1.25	5.32	1.10	4.79
La Salle.....	245	1.40	5.71	1.25	5.10	1.10	4.49
Streator.....	271	1.40	5.16	1.25	4.61	1.10	4.05
Peoria.....	308	1.40	4.54	1.25	4.05	1.10	3.57
Farmington.....	284	1.40	4.98	1.25	4.40	1.10	3.87
Canton.....	295	1.40	4.74	1.25	4.23	1.10	3.72
Cuba.....	295	1.40	4.74	1.25	4.23	1.10	3.72
C. & N. W.:							
Spring Valley.....	271	1.40	5.16	1.25	4.61	1.10	4.05
Peoria.....	319	1.40	4.28	1.25	3.91	1.10	3.44
C., M. & St. P.:							
Ladd.....	281	1.40	4.98	1.25	4.44	1.10	3.91
Cherry.....	284	1.40	4.92	1.25	4.40	1.10	3.87

The table next below shows the same data with respect to the Springfield and southern Illinois groups as does the preceding table with respect to the northern Illinois group:

To La Crosse from—	Dis- tance.	Current rate.	Per ton- mile.	Claimed.			
				Soft coal.	Per ton- mile.	Fine coal.	Per ton- mile.
C., B. & Q.:	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>
Virden.....	383	\$1.80	4.69	\$1.65	4.30	\$1.50	3.91
Girard.....	387	1.80	4.65	1.65	4.26	1.50	3.87
Litchfield.....	407	1.80	4.42	1.65	4.05	1.50	3.68
Sorento.....	420	1.80	4.28	1.65	3.92	1.50	3.57
Panama.....	423	1.80	4.25	1.65	3.90	1.50	3.54
Centralla.....	464	2.00	4.31				
Sesser.....	496	2.10	4.23	1.95	3.93	1.80	3.62
Cristopher.....	504	2.10	4.10	1.95	3.86	1.80	3.57
Herrin.....	516	2.10	4.05	1.95	3.77	1.80	3.48

Defendants submit other exhibits showing rates and ton-mile earnings from representative shipping points in all the principal groups involved herein to St. Paul, also exhibits comparing the rates and ton-mile earnings from representative group points to other points in the same general territory for similar distances. Comparisons of rates and earnings on coal transported similar distances between points in central freight association and eastern trunk line territories are also presented. Still another exhibit shows the Illinois, Iowa, Nebraska, and Missouri distance tariff rates on coal for 276 miles, the average distance from points in the northern Illinois group to La Crosse.

It is not considered necessary to set forth and discuss in detail the various exhibits submitted by complainant and defendants. They have all been carefully considered in connection with the testimony of all parties, and upon the whole record we are of opinion and find that the rates assailed have not been shown to be unreasonable, un-
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justly discriminatory, or unduly prejudicial, and have been justified by defendants. The complaint will be dismissed.

There remains for consideration the question of a differential between screenings and other sizes of bituminous coal. In justification of the rate of \$1.46 applicable on screenings defendants testify that for a number of years the relationship between the northern Illinois group rate and the rate on coal moving from the docks at Duluth, Minn., to St. Paul was maintained on the basis of \$1.40 from northern Illinois mines and 90 cents from Duluth. In 1914 the rate from Duluth was increased to 96 cents and the rate from Illinois mines to \$1.50. In September, 1915, the rate from northern Illinois mines was further advanced to \$1.60, resulting in a total increase of 20 cents per ton on coal from Illinois points as opposed to an increase of but 6 cents per ton on coal from Duluth. It is testified that in order to enable the Illinois producers to sell in competition with the docks at Duluth it was decided to reduce the rate on screenings from mines in northern Illinois to the present basis so as to make the net increase over the original rate the same as the increase from Duluth. Defendants state that this adjustment is occasioned solely by the competitive conditions existing at St. Paul. It is testified that the situation at La Crosse is entirely different; that to La Crosse the net increase on coal of all grades has been only 5 cents per ton from the Illinois group and differentially from the other groups; and that at the present time the rate on screenings to St. Paul is 6 cents per ton in excess of the rate on screenings to La Crosse. Defendants assert, moreover, that it has not been their general policy to maintain rates on coal to points in Wisconsin and Minnesota based on differences in size. Complainant offers no persuasive evidence in support of its request for a differential adjustment, nor does it appear that the present rate of \$1.46 on screenings to St. Paul subjects La Crosse to any undue prejudice. The record in this case discloses no necessity for the establishment of the differential between screenings and other sizes of coal sought by complainant.

Orders will be entered in accordance with the views herein expressed.

INVESTIGATION AND SUSPENSION DOCKET No. 888.
CEMENT-PLASTER FROM PLASTERCO, TEX.

Submitted January 15, 1917. Decided April 12, 1917.

Proposed increased rates on cement plaster and commodities taking the same rates, in carloads, from Plasterco, Tex., to stations on the St. Louis & San Francisco Railroad in Oklahoma, Kansas, Missouri, and Arkansas, and to Memphis, Tenn., found not justified, and suspended schedules required to be canceled.

Thomas Bond for St. Louis & San Francisco Railroad Company.

J. J. Lane for Kansas City, Mexico & Orient Railway Company of Texas, and Kansas City, Mexico & Orient Railway Company.

W. D. Lindsay for United States Gypsum Company.

W. V. Hardie and *S. M. Gloyd* for Texas Cement Plaster Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to take effect July 22, 1916, increases ranging from 3.5 cents to 4.5 cents per 100 pounds are proposed in the car-load commodity rates on cement plaster and commodities taking the same rates from Plasterco, Tex., to stations on the St. Louis & San Francisco Railroad, hereinafter called the Frisco, in Oklahoma, Kansas, Missouri, and Arkansas and to Memphis, Tenn. With the exception of a few points of destination, the proposed rates are uniformly 3.5 cents higher than the present rates. Upon protest filed by the Texas Cement Plaster Company, of Oklahoma City, Okla., with a mill at Plasterco, the schedules were suspended until May 19, 1917. The United States Gypsum Company, with a mill at Eldorado, Okla., intervened at the hearing, but introduced no testimony. Most of the evidence introduced relates to the rates from Plasterco as compared with the rates from Acme, Tex. The Frisco assumed the burden of justifying the proposed rates. Rates are stated in cents per 100 pounds.

Plasterco is located on the Kansas City, Mexico & Orient Railway of Texas, hereinafter called the Orient, 142 miles south of Altus, Okla., which is the junction point of the Orient line with the Frisco. Acme is situated on the Quanah, Acme & Pacific Railroad, hereinafter called the Acme & Pacific, and the Fort Worth & Denver City Railway, 5 miles from Quanah, Tex., which is the junction point of these carriers with the Frisco. Northbound traffic moving from

Plasterco is delivered to the Frisco at Altus, while from Acme it is delivered to that carrier at Quanah, moving thence through Altus, the distance from Acme to Altus being 41 miles. The record indicates that all cement plaster from Acme destined to Frisco points is moved by the Acme & Pacific from Acme to Quanah.

The rates on cement plaster in carloads from and to the points in question were considered by us in *Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 508, decided March 5, 1913. Prior to our decision in that case the Frisco refused to enter into joint through rates with the Orient on cement plaster from Plasterco to points on its lines. In that case we said:

It is generally conceded by carriers operating in this territory that Plasterco should be grouped with Acme with regard to rates on cement plaster. * * * It seems clear from the record that Plasterco should take no higher rates to points on the line of the Frisco than does Acme. * * * We therefore find that it is unreasonable under the circumstances here shown to charge complainant for the transportation of cement plaster in carloads from Plasterco to points on the line of the Frisco higher rates than are contemporaneously charged from Acme to the same points.

If the schedules under suspension are permitted to become effective, the Plasterco rates to points on the Frisco will be from 3.5 cents to 4.5 cents higher than the corresponding rates from Acme, as no increase is proposed in the rates from the latter point.

The Frisco states that it was forced by carrier and market competition to establish the present rates from Acme, and that the rates from that point are subnormal; that as Plasterco is approximately 102 miles farther distant from the destinations in question than is Acme, it should properly take higher rates; that the proposed rates from Plasterco would be reasonable and just as compared with the present rates from Acme; and that if the present rates from Plasterco are continued, complaints from plaster-producing points on its line in Oklahoma will result. Numerous rate comparisons were submitted intended to show that the present rates from Acme and Plasterco are too low. For the same purpose, exhibits were filed showing the per ton-mile earnings under the present rates. For example, it is shown that the present rate from Acme and Plasterco to Memphis is 18 cents per 100 pounds for distances of 773 miles and 873 miles, respectively, and that this rate yields, from Acme, 4.66 mills per ton-mile, from Plasterco, 4.12 mills.

In support of its contention that, distances considered, Plasterco should take a higher rate than Acme, the Frisco cited our decisions in *Texas Cement Plaster Co. v. St. L. & San Fran. R. R. Co.*, 12 I. C. C., 68, and *Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co.*, 35 I. C. C., 109. But aside from the question of dis-

tances, the circumstances prevailing here are not comparable with those existing in the cases cited.

The Orient is willing to continue the present rates. Its representative testified that Plasterco and Acme are grouped with respect to class rates and commodity rates generally, and that there is no reason why an exception should be made as to the rates on cement plaster.

The average value of cement plaster is about \$3.80 per ton and the average carload is worth approximately \$78 at point of origin. Protestant is in keen competition with a mill at Acme, and its representative testified that his company could not sell its product at points on the Frisco in competition with its Acme competitor if the proposed rates are established. It shows that Acme and Plasterco are grouped with respect to class and commodity rates to practically all of the points involved; that southbound class and commodity rates from St. Louis, Mo., and from other points to Acme and Plasterco are usually the same; and that many carriers, by establishing the same rates on cement plaster from Plasterco as from Acme to various points in the same general territory on their lines, recognize that Acme and Plasterco should be grouped with respect to rates on cement plaster.

It does not appear that the present conditions differ from those existing at the time of our decision in *Texas Cement Plaster Co. v. St. L. & S. F. R. R. Co.*, *supra*. On the contrary, they appear to be the same. The Frisco contends, however, that we erroneously assumed in the former case that the carriers were willing to put Plasterco on the same basis as Acme, but that they could not agree as to divisions. The following excerpt from our report in that case clearly indicates the Frisco's position at that time:

The Frisco contends that the rate adjustment now in effect does not discriminate against Plasterco, and apparently rests its refusal to enter into joint through rates with the Orient upon the ground that it is entitled to earn the same revenue on cement plaster transported from Plasterco via Altus to Frisco destinations that it earns on shipments originating at Acme and moving via Quanah, thence through Altus to the same points. It is asserted that the divisions on shipments from Acme are very low, and that the difference in the service on shipments from Plasterco as compared with those from Acme is not such as to warrant it in accepting less than it receives on business from Acme. It appears that on shipments from Acme, destined to points on the Frisco, the Quanah, Acme & Pacific receives an arbitrary allowance of 8 cents per 100 pounds to Quanah as its proportion of the joint through rates, the Frisco receiving the balance. It is further stated by the Frisco that there are a large number of mills located upon its line which are entitled to some protection.

The Frisco's justification in this case rests upon substantially the same grounds that were urged against the establishment of the rates

it is now seeking to increase. The record shows that it receives on traffic from Plasterco delivered to it at Altus the same revenue it receives on traffic from Acme delivered to it at Quanah, and for a somewhat shorter haul. The establishment of the proposed increased rates would place protestant at a serious disadvantage in competing with shippers at Acme and other points taking the same rates. The carriers have voluntarily grouped Plasterco with Acme on both northbound and southbound traffic, generally, and no sufficient reason appears for making an exception with respect to the rate on cement plaster.

It is our conclusion upon this record that respondents have not justified the proposed increased rates. This finding is subject to modification if a different conclusion is reached with respect to the rates from Plasterco as compared with the rates from Acme in Docket No. 8216, *Texas Cement Plaster Co. v. A., T. & S. F. Ry. Co.*, a more comprehensive proceeding now pending.

An order will be entered requiring the cancellation of the schedules under suspension.

43 L. C. C.

**INVESTIGATION AND SUSPENSION DOCKET No. 882.
SAND FROM INDIANA STATIONS (No. 2).**

Submitted January 26, 1917. Decided April 3, 1917.

Proposed increased rates on sand, loam, and black dirt from Dock Siding, Gary, McCools, Miller, and Willow Creek, Ind., to points within the Chicago switching limits found not justified. Suspended schedules ordered canceled.

P. F. Finnegan and *S. M. Rinaker* for Baltimore & Ohio Railroad Company.

Walter E. McCormack for American Sand & Gravel Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules, filed to take effect July 10, 1916, respondents proposed to increase their rates for the transportation of sand, loam, and black dirt from Dock Siding, Gary, McCools, Miller, and Willow Creek, Ind., in connection with the Baltimore & Ohio Railroad as the originating line, to points within the Chicago, Ill., switching limits. Upon protest by the American Sand & Gravel Company the schedules were suspended until November 7, 1916, and later until May 7, 1917. Rates are stated in cents per ton of 2,000 pounds. The present rates for one-line hauls are 20 cents to certain points in the southern portion and 25 cents to certain points in the northern portion of the district; the proposed rates are 21 cents and 26 cents, respectively, being the present rates to most, if not all, other such one-line delivery points. The present rate to industries on connecting lines, other than the Minneapolis, St. Paul & Sault Ste. Marie Railway, is 40 cents and the proposed rate 42 cents. To industries on the latter road the present rate is 50 cents and the proposed rate 53 cents.

The present and proposed rates apply on loam, black dirt, and sand, and all of these commodities will hereinafter be referred to as sand. In November, 1915, respondents herein, as well as other carriers, proposed to increase the rates then in effect on sand from points in Indiana to Chicago. Upon protest the proposed rates were suspended, and were considered in *Sand from Indiana Stations*, 39 I. C. C., 821, decided May 8, 1916. In that case it was shown that—

The rates on sand for one-line hauls from producing points in Indiana on the New York Central Railroad, Pennsylvania Company, Baltimore & Ohio Railroad, and Michigan Central Railroad to the northern portions of the Chicago switching district are 5 cents higher than to the southern portion. The present rates over these roads are 21 cents to the southern portion and

26 cents to the northern portion of the district; the proposed rates, 25 cents and 30 cents, respectively. The present rates over these roads, except the Baltimore & Ohio, to industries on connecting lines anywhere in the switching district, are 42 cents, while the proposed rates are 50 cents. The present rate to industries on other lines from points on the Baltimore & Ohio is 40 cents; the rate proposed, 50 cents. * * * The distance for which the rates involved apply range from 14 miles to 57 miles.

We found that the rates proposed had not been justified, and respondents therein were required to cancel the suspended schedules. The conditions surrounding the transportation of sand from points in Indiana to Chicago are set forth in our report in that case and need not be restated here. The rates which the respondents therein proposed to increase, with the exception of the rate of 40 cents from points on the Baltimore & Ohio to industries on connecting lines, represented an increase of 5 per cent over the rates in effect prior to our decision in *The Five Per Cent Case*, 31 I. C. C., 351. The rate from Dune Park on the Indiana Harbor Belt Railroad to industries on connecting lines, including the Baltimore & Ohio, was also 40 cents, and this rate is still in effect.

Protestant ships considerable quantities of sand from its sand pit at Miller, which pit is reached only by the Baltimore & Ohio, to its Chicago yards, located on the Chicago & North Western and the Chicago, Milwaukee & St. Paul railways. The Consumers' Company, protestant's principal competitor, ships from Miller and Dune Park, Ind., the latter a more distant point. The pits of the Consumers' Company are reached by the Indiana Harbor Belt Railroad. Protestant's only concern, therefore, is with the proposed 42-cent rate. No objection thereto having been offered, and it appearing that an appropriate alignment will result, the proposed one-line rates of 21 and 26 cents may be permitted to become effective.

The Baltimore & Ohio, hereinafter called the respondent, was the only carrier represented at the hearing. The movement of sand from Miller to protestant's yards involves a three-line haul, with the belt railway as an intermediate carrier. Respondent hauls the empty cars from its South Chicago yards to the sand pit, about 18 miles, whence, after loading, they are returned to those yards and delivered to the belt railway. Respondent emphasizes the low net return to it, about \$2.50, on a 100,000-pound car, after its absorption of the delivering line's charges; it is, however, the total charge which is to be considered.

The principal justification offered for the proposed rates is that they constitute an increase of 5 per cent authorized in the *Five Per Cent Case*, *supra*, and it is insisted that these rates were not published earlier solely because of a clerical error. In support of this respondent shows that, following our decision in that case, it did in-

crease the rate to connecting lines' team tracks 5 per cent, and, in some instances, the rates for one-line hauls 5 per cent.

In *Globe Soap Co. v. A. & S. Ry. Co.*, 40 I. C. C., 121, we said:

The permission given in *The Five Per Cent Case*, *supra*, was necessarily general. That case did not approve any specific rate as reasonable in itself or as properly adjusted with respect to other rates, nor did it justify in advance any rate which might be published as a result thereof. The act casts upon the carrier the burden of proof to show that a rate increased after January 1, 1910, is just and reasonable, and that burden is not removed by a general permission of the Commission, such as that relied upon by the defendants, for it is the total rate which must be justified and not the amount of the increase.

Respondent observes that rates of 42 cents apply on sand from Indiana points on the lines of the Pere Marquette, the New York Central, the Pennsylvania Company, and the Michigan Central, and that in *Sand from Indiana Stations*, *supra*, those rates were not disturbed, although it was shown that the earnings derived by the Pennsylvania Company under such rates were greater than those which would be derived by the Baltimore & Ohio if the rates here proposed become effective. In that case, however, the rates which the respondents therein proposed to increase were not questioned or passed upon; our finding was merely that respondents had not justified the proposed rates.

At the hearing attention was called to the fact that the proposed rate to points on the belt railway and to all points beyond on the Indiana Harbor Belt would exceed by 1 cent the aggregate of the intermediate local rates.

While the present rates are not in line with those of the Pere Marquette, the New York Central, the Pennsylvania, and the Michigan Central, it is also true that the proposed rate of 42 cents would not be in line with the 40-cent rate maintained by the Indiana Harbor Belt in which the Baltimore & Ohio still concurs, and the evidence adduced is not sufficient to meet the statutory burden resting upon respondents.

We find that respondents have not justified the proposed increased rates of 42 and 53 cents. The suspended schedules will be ordered canceled, but respondents may republish, upon five days' notice, the above-mentioned rates of 21 and 26 cents.

CLARK and HARLAN, *Commissioners*, dissent.
43 I. C. C.

No. 8399.
SERGEANT GLASS COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL

Submitted May 5, 1916. Decided April 3, 1917.

Rates on rough rolled glass, in carloads and less than carloads, from Sergeant, Pa., to Toronto, Ontario, and Montreal, Quebec, not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Clement Jungers for complainant.

Frederic L. Ballard for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of rough rolled glass at Sergeant, Pa. By complaint, filed August 23, 1915, it alleges that defendants' carload and less-than-carload rates on rough rolled glass to Toronto, Ontario, and Montreal, Quebec, from Sergeant, are unreasonable, unjustly discriminatory, and unduly prejudicial as compared with the rates from Port Allegany, Pa., and Morgantown, W. Va. Rates not exceeding those contemporaneously maintained from Port Allegany are asked.

Sergeant and Port Allegany are located, respectively, on the Renovo and Buffalo divisions of the Pennsylvania Railroad, the former 51 miles west, and the latter 24 miles north, of Emporium, Pa.; Morgantown is approximately 100 miles south of Pittsburgh, Pa., on the Connellsville division of the Baltimore & Ohio Railroad. For the purposes of rate making the carriers have divided the territory of origin into three groups with respect to the class rates to Toronto and Montreal: (1) The Rochester group, embracing all points on the Buffalo division, extending from Buffalo, N. Y., in a southerly direction to Emporium; (2) the Baltimore group, embracing certain points on the Renovo division, west of Emporium, including Sergeant, and all points on that part of the Pennsylvania Railroad extending east from Emporium to Williamsport, Pa., and thence north to Lake Ontario and south to Baltimore; and (3) the Pittsburgh group, embracing, generally, points west and south of the line formed by the Buffalo division, including Pittsburgh. Points south of Pittsburgh, such as Morgantown, take class rates which are made by adding certain arbitraries to the rates from Pittsburgh.

The official classification rates rough rolled glass in carloads fifth class, and in less than carloads third class. Complainant ships about 80 per cent of its product in carloads, and the evidence adduced was chiefly directed to the carload rates applicable. The fifth-class rates apply generally on ordinary glass, including rough rolled glass, from the producing territory to Canada, except that from Sergeant and near-by glass-producing points taking the Baltimore basis of class rates to Toronto, commodity rates equivalent to the fifth-class rates from Pittsburgh are applicable. The following table shows the fifth-class rates from representative points to Toronto and Montreal, together with the respective distances; rates stated in cents per 100 pounds:

From—	To Toronto.		To Montreal.	
	Distance.	Rate.	Distance.	Rate.
	Miles.	Cents.	Miles.	Cents.
Port Allegany.....	210	16.7	487	21
Sergeant.....	255	18.9	542	23
Pittsburgh.....	370	18.9	691	26.3
Baltimore.....	509	23.9	570	23
Morgantown.....	470	20.9	791	28.3

¹ Commodity rate.

To Toronto the Pittsburgh basis is lower than the Baltimore basis because the distance to Toronto from the Pittsburgh group points is less than from the Baltimore group points, while to Montreal the distance from the Baltimore group points is less than from the Pittsburgh group points, and the Baltimore basis is consequently lower than the Pittsburgh basis.

Complainant's nearest competitor is located at Port Allegany, which is 45 miles nearer Toronto and Montreal than is Sergeant. There are various other glass factories located west of Emporium and in the immediate vicinity of Sergeant, namely, at Kane, Sheffield, Wilcox, and Brockwayville, Pa., but they do not manufacture rough rolled glass. Other kinds of commercial glass taking the same carload rates as rough rolled glass are manufactured at these points. Complainant also has a competitor at Morgantown, from which point it is alleged the rates on rough rolled glass are the same as the rates from Sergeant. But the rates to Toronto and Montreal from Morgantown are substantially higher than the rates from Sergeant.

The main issue presented, and that to which the prayer for relief is specifically directed, is: Are the rates on rough rolled glass from Sergeant to Toronto and Montreal unreasonable, unjustly discriminatory, or unduly prejudicial as compared with the rates from Port Allegany. On rough rolled glass from Sergeant and Port Allegany

there is a difference in favor of Port Allegany in the carload and less-than-carload rates, respectively, to Toronto, of 2.2 cents and 3.6 cents; to Montreal, of 2 cents and 3.6 cents.

Defendants urge that on the basis of distance Port Allegany is entitled to lower rates to the destinations in question than is Sergeant; that such difficulty as complainant experiences on account of the lower rates applying on rough rolled glass from Port Allegany arises from the fact that its factory is located just outside of the Rochester group; that this boundary has been fixed for many years at its present location; and that to place Sergeant on an equality with Port Allegany would seriously disturb the existing glass rate group adjustment and would throw out of alignment the rates from other shipping points which are now on a rate equality with Sergeant.

As we have frequently observed, in considering group rates, there must necessarily be a dividing line, and between points in different groups near that line some difference in rates is inevitable.

We find that the rates assailed are not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

43 L. C. C.

No. 8458.
CANNON MANUFACTURING COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

FOURTH SECTION APPLICATION No. 1548.

Submitted April 15, 1916. Decided April 2, 1917.

All-rail and rail-and-water rates on cotton towels from Kannapolis and Concord, N. C., to eastern port cities and interior eastern cities held unreasonable to the extent they exceed by more than 3 cents per 100 pounds the contemporaneous rates on cotton piece goods between the same points.

E. L. Travis for complainant.

R. Walton Moore and *Edward H. Hart* for Southern Railway Company, Old Dominion Steamship Company, and others.

Frederic L. Ballard for Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; and New York, Philadelphia & Norfolk Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complaint alleges that the all-rail and rail-and-water rates on cotton towels from Kannapolis and Concord, points on the line of the Southern Railway in the state of North Carolina, to eastern ports, including Baltimore, Philadelphia, New York, and Boston, and to interior eastern cities, are unreasonable and unduly prejudicial by comparison (a) with the rates from Griffin, Jackson, and Columbus, in the state of Georgia; (b) with the rates on other cotton factory products from Kannapolis, Concord, and other North Carolina and Georgia points; (c) with the rates on cotton towels and cotton piece goods between different points in the south; and (d) because they exceed the rates from Griffin, Jackson, and Columbus in violation of the fourth section. The correction of the adjustment is demanded and reparation is asked on three carload shipments moving all rail from Kannapolis to New York during September, 1914. For the future the complainant asks that the rate on cotton piece goods shall be made applicable to cotton towels, or, if that basis is not warranted, that cotton towels may take a maximum of 3 cents per 100 pounds over the established rates on cotton piece goods.

At the hearing the carriers announced their purpose to correct the fourth section departures by increasing the rates from the Georgia points to the eastern ports and the interior eastern cities as well as the rail-and-water rates to the interior eastern cities; and therefore no detailed testimony upon the merits of their fourth section application was presented. The other rates from Georgia points now conform to the requirements of the fourth section.

The all-rail rates on cotton towels from southern manufacturing points to these eastern ports and interior points are made by combining the proportionals from the southern points of origin to the Virginia gateways with the first-class rates of the trunk lines beyond the gateways, the proportionals on cotton towels being 3 cents higher than on cotton piece goods. The rail-and-water rates to eastern port cities are 3 cents higher than the contemporaneous rail-and-water rates on cotton piece goods; the rail-and-water rates to the interior cities are 3 cents lower than the all-rail rates. This general rate basis applies from Kannapolis and Concord, except that in some instances the rail-and-water rates on cotton towels to eastern ports are more than 3 cents higher than rates on cotton piece goods. This inconsistency resulted from the reduction, in certain cases, of the rates on cotton piece goods and cotton towels from Griffin, Jackson, and Columbus to an uninsured basis, restricted as to pier delivery, without a corresponding reduction in the towel rates from Kannapolis and Concord. From the Georgia points the basis for both the all-rail and rail-and-water rates on cotton towels to eastern ports and interior points is 3 cents over the rate on cotton piece goods. The defendant, the Southern Railway, is willing to join in rates from Kannapolis and Concord on that basis, but the trunk lines north of the Virginia gateways object to the establishment of rates north of the gateways that will yield them less than their first-class specifics.

From Kannapolis and Concord yarns, sheetings, and gingham take the same rates as cotton piece goods, and blankets take rates 3 cents higher than cotton piece goods. The complainant contends that, in view of their relative value and density as compared with these articles, cotton towels should take no higher rates. The record indicates their relation of value per pound as follows: Ginghams 35.66 cents, sheetings 21.66 cents, cotton blankets 21 cents, yarn 30 cents, cotton towels 21 cents; and the relative weight per cubic yard, ginghams 23.3 pounds, sheetings 16.3 pounds, cotton blankets 8 pounds, yarn 20 pounds, cotton towels 15.6 pounds. It will be observed that on the average ginghams and yarn exceed cotton towels in value and density. Sheetings are about the same as cotton towels both in value and density. Cotton blankets are of about the same

value as towels but of considerably less density. Gingham and sheetings are the basic products of cotton mills and move in much greater volume than towels. Yarn constitutes 80 per cent of the total output of the southern mills. Cotton blankets ordinarily move in less volume than cotton towels. The latter are packed in wooden cases and are less susceptible to damage in transit, from oil and water and the use of hooks in handling, than are sheetings and other cotton piece goods when packed in bales. If these factors alone were considered, it is possible that cotton towels would be entitled to a rating as low as the rating on the other commodities named. There are, however, other factors which bring about the higher rating on towels.

In the southern classification cotton towels are rated first class and cotton piece goods fourth class. In the official classification cotton towels are rated first class and cotton piece goods 15 per cent below second class, but not less than third class.

The trunk lines admit that from the standpoint of relative values and uses the dividing line between these ratings is narrow and of doubtful justification with respect to many articles sold to department stores finished and ready for sale to the public. But they contend that the relative values and densities of towels and other cotton factory products should not control the differences in rates to the exclusion of other considerations. They argue that the distinction is clear and necessary with respect to the vast volume of unfinished articles that are subject to rule 25 of official classification, and which are shipped between factory points for further manufacture before they are ready for sale, and which therefore come into competition with other raw materials such, for example, as burlaps and paper used in the manufacture of bagging. Accordingly, they assert that these considerations of commercial necessity may not be disregarded altogether, and that differences in rating may not properly be controlled solely by these differences in value and density. They feel strongly disinclined to join with the Southern Railway in the establishment of through rates on the basis asked not only for these reasons but because that course, as they apprehend, will lead to importunities for reduced ratings on the same and perhaps other finished articles in official classification territory. They show that, with the exception of cotton blankets, which take the cotton piece goods rates, practically all finished cotton articles moving within, from, or to official classification territory now take first-class rates, and that on cotton blankets they have joined with the southern lines in rates 3 cents higher than on cotton piece goods in order to assist the southern manufacturers in their competition with the New England mills.

The rates on cotton towels from Kannapolis and Concord are the same as on cotton piece goods to Atlanta, Birmingham, and Chattanooga and 3 cents higher than on cotton piece goods to the Virginia cities, to the Ohio River gateways, to Johnstown, in the state of Pennsylvania, and points taking the same rates, to Chicago, Indianapolis, and Milwaukee and points taking the same rates, and to Cleveland, Detroit, and Toledo and points taking the same rates. These rates are all rail except to Johnstown and related points, which are rail and water.

The rates on towels are the same as on cotton piece goods from Maine Central points to New York, from Fries, a cotton mill point in Virginia to the east, from Texas points rail and water to New England, and from New York, Philadelphia, and Baltimore to Norfolk and other Virginia cities.

The trunk lines argue that the rates on cotton towels from eastern ports to Norfolk and other Virginia cities were placed on the cotton piece goods basis to meet water competition between those points, and that the fourth section relief with respect to their relationship to intermediate points has been granted; that they receive their first-class specifics as divisions of the rates to Johnstown and points taking the same rates, and that they do not participate in the rates to Chicago, Indianapolis, and other points in central freight association territory.

It appears that about the time cotton mills were being established in the south, the Southern Railway, in order to aid in their development, fixed the same basis of rates on cotton towels as on cotton piece goods, but shortly thereafter, owing to demands for similar reductions in rates from manufacturers of other finished articles such as pillow cases, cotton lap dusters, cotton sheets, and bedspreads, it was compelled to withdraw those rates. Finally the rates on towels and other finished articles enumerated were placed, generally throughout the south, on the present basis of 3 cents over the rates on cotton piece goods. Accordingly, the through rates involved here were established at 3 cents over the cotton piece goods rates from these manufacturing points to the Virginia gateways, plus the first-class rates of the trunk lines beyond the gateways. Another reason for the establishment of the present basis on these articles was the refusal of the trunk lines longer to participate in the former rates, because of the probable effect on their own shippers, although the trunk lines received under those rates their full first-class rates as divisions north of the gateways.

Upon all the facts shown of record we conclude and find that the all-rail and rail-and-water rates on cotton towels from Kannapolis and Concord to the eastern ports and interior cities in question are

unreasonable and for the future will be unreasonable to the extent that they exceed by more than 8 cents per 100 pounds the rates at the same time maintained on cotton piece goods between the same points. We further conclude and find that the complainant has not established its claim for reparation.

In view of the fact that the defendants at the hearing announced their purpose to correct the fourth section departures hereinbefore alluded to, and offered no testimony to justify that condition in their rates, their application under the fourth section for relief will be denied.

An order will be entered in accordance with the foregoing views.



No. 8286.

NORTHWESTERN COOPERAGE & LUMBER COMPANY

v.

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE
RAILWAY COMPANY ET AL.

Submitted May 26, 1916. Decided April 3, 1917.



Rates on lumber and its products in carloads from Gladstone, Mich., and grouped points to Chicago, Ill., Milwaukee, Wis., and various other points in Wisconsin and Illinois, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

A. E. Solie for complainant.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Gladstone, Mich. By complaint, filed September 3, 1915, it alleges that defendants' rates on lumber and its products, in carloads, from Gladstone and grouped points to Chicago, Ill., Milwaukee, Wis., and various other points in Wisconsin and Illinois on the Chicago & North Western Railway, hereinafter called the North Western, and the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee, as shown in supplement No. 5 to Minneapolis, St. Paul & Sault Ste. Marie Railway tariff I. C. C. No. 3610, are unreasonable, unjustly discriminatory, and unduly prejudicial. The rates assailed

are now carried in a subsequent supplement to the same tariff. Rates are stated in cents per 100 pounds.

Gladstone is representative of the points of origin, and Chicago and Milwaukee of the points of destination. Gladstone is a local point on the Minneapolis, St. Paul & Sault Ste. Marie Railway, hereinafter called the Soo line, on the western shore of Lake Michigan. For a long time prior to August 14, 1915, the rate on lumber and its products, hereinafter referred to as lumber, from Gladstone to the points in question was 10 cents. On that date it was increased to 11 cents, and this rate is still in effect. As the present rate represents an increase since January 1, 1910, the burden of justifying it is on defendants. The Soo line was the only defendant represented at the hearing.

Complainant's shipments of lumber from Gladstone to the destinations involved range from 150 to 300 carloads per year. During the year ended November 30, 1915, complainant shipped 226 carloads, of which 119 moved to Chicago, 30 to Milwaukee, and 11 to Kenosha, Wis.

The 11-cent rate from Gladstone to Chicago applies by way of four routes: Soo line to Hermansville, Mich., or Larch, Mich., and North Western thence to destination; Soo line to Pembine, Wis., and Milwaukee thence to destination; and Soo line all the way. The rates by way of the Soo line all the way are not attacked. It is stated that the rate was increased from 10 cents to 11 cents to meet the requirements of the long-and-short-haul rule of the fourth section. On September 17, 1914, prior to the filing of this complaint, and pursuant to the applications of the Soo line, as well as of other carriers, we issued Fourth Section Order No. 4240, to take effect on or before January 15, 1915. The effective date was subsequently extended to April 15, 1915. This order authorized the continuance of rates on lumber to Chicago and Chicago rate points from Gladstone and related points lower than the rates contemporaneously maintained from intermediate points, with the proviso that the rates from the intermediate points should not exceed a prescribed scale under which the maximum rate for 325 miles or less was 10 cents, and for 450 to 460 miles, 13.8 cents. It was further provided that the rates then in effect from the intermediate points should not be exceeded. Amended Fourth Section Order No. 4240, effective July 15, 1915, nullified the effect of the original order in so far as traffic from Gladstone and related points was concerned, and required the observance of the provisions of the fourth section with respect to such traffic. The effective date of the amended order was extended 30 days upon request of the Soo line. On August 14, 1915, the Soo

line complied with the requirements of the order by increasing the rate from Gladstone to Chicago and Chicago rate points to 11 cents. *Pierce v. C. & N. W. Ry. Co.*, 41 I. C. C., 605; *Lumber between Points in Western Trunk Line Territory*, 38 I. C. C., 370. With the adjustment of the rates to conform to the requirements of the fourth section over the Soo line, the joint rate in connection with the North Western and the St. Paul, here in issue, was increased from 10 cents to 11 cents.

Gladstone is 318 miles from Chicago by way of the route through Larch in connection with the North Western, 331 miles in connection with the St. Paul through Pembine, and 517 miles by way of the Soo line all the way. The 11-cent rate over these routes yields 6.91 mills, 6.65 mills, 4.26 mills per ton-mile, respectively. Complainant cites rates of 10 cents on lumber from points in Michigan and Wisconsin on the North Western, the St. Paul, the Soo line, the Marinette, Tomahawk & Western Railroad, and the Green Bay & Western Railroad to Chicago for distances ranging from 277 miles to 460 miles.

Defendants show that an 11-cent rate applies to Chicago from all points in groups A and No. 10, which include Gladstone and cover the territory from Farnham, Mich., to Cherry Valley, Mich.; that Ensign, Mich., 12 miles east of Gladstone, represents the middle of the territory and is 340 miles from Chicago by way of the Soo line and the North Western through Hermansville, and 343 miles by way of the Soo line and the St. Paul through Pembine. The 11-cent rate from Ensign to Chicago by way of the Hermansville route yields 6.5 mills per ton-mile and by way of the Pembine route 6.4 mills. Many other points of destination are embraced in this controversy to which the distances are less. The Minnesota intrastate rates under the Cashman act are on the basis of 11.1 cents for distances of 340 miles, and the Michigan state scale rate of 14 cents applies intrastate for an equal distance between points in Michigan. In *Lumber between Points in Western Trunk Line Territory*, *supra*, we approved rates of 12 cents from Duluth and Minneapolis, Minn., to Chicago for distances of 469 and 408 miles, respectively. Rates from Bay City and other points in Michigan to Milwaukee, Wis., Buffalo, N. Y., and points in trunk line territory range from 11 cents to 14 cents for distances of 275 miles to 343 miles.

In *Pierce v. C. & N. W. Ry. Co.*, *supra*, we found that the rate of 11 cents on lumber from Rhinelander to Chicago and to points in the Chicago switching district was not unreasonable, unjustly discriminatory, unduly prejudicial, or otherwise in violation of the act. The distances there involved were 310 miles by way of the North Western and 392 miles by way of the Soo line.

The allegation of undue prejudice is based upon the fact that rates of 10 cents apply to Chicago from the following points: Wells, Mich., 317 miles by way of the Escanaba & Lake Superior Railway and the North Western, and 379 miles by way of the Escanaba & Lake Superior Railway and the Milwaukee through Channing, Mich.; Dunbar, Wis., 457 miles, and Goodman, Wis., 447 miles, by way of the Soo line; West Gladstone, Mich., 320 miles, Pembine, Wis., 318 miles, Escanaba, Mich., 314 miles, and Hermansville, Mich., 296 miles, by way of the North Western. In the sale of lumber at Chicago, Milwaukee, and other points of destination complainant encounters the competition of lumber shipped from points from which the 10-cent rates apply. The principal justification offered for this situation is that the Soo line does not serve some of these points, and that the rates from those it does serve are made in competition with other carriers. The Soo line argues that no undue prejudice is therefore practiced by it. Other things being equal, the rate for a two-line haul may properly be higher than the rate for a one-line haul, and the rates involved do not appear to exceed the rate sought by more than a reasonable switching charge.

We find that the rates assailed are not unreasonable, unjustly discriminatory, or unduly prejudicial, and the complaint will be dismissed.

43 I. C. C.

No. 8045.¹

G. S. BAXTER & COMPANY ET AL

v.

FLORIDA, ALABAMA & GULF RAILROAD COMPANY
ET AL

Submitted February 5, 1917. Decided April 3, 1917.

Rates on crossties in carloads from points in Alabama and Florida to Pensacola, Fla., found to have been and to be unreasonable to the extent that they exceeded and exceed the rates contemporaneously maintained from and to the same points on lumber in carloads of the kind of wood from which the crossties are made. Reparation awarded and defendants required to maintain rates on crossties not in excess of the rates contemporaneously applicable on lumber of the kind of wood from which the crossties are made.

James F. Phillips for complainants and intervener.

Edward D. Mohr for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are G. S. Baxter, W. Ferguson, jr., and W. F. Jones, copartners, engaged in the crosstie business under the name of G. S. Baxter & Company, with their principal office at Pensacola, Fla. By complaints, filed May 24, 1915, they allege that the rates charged by defendants for the transportation of crossties in carloads from certain points in Florida and Alabama to Pensacola are unreasonable and unjustly discriminatory to the extent that they exceed the rates on lumber of the kind of wood from which the crossties are made. Reparation is asked on 88 carloads of pine crossties shipped from Wing, Falco, and Watson, Ala., to Pensacola during the period from April 20, 1914, to December 17, 1914, inclusive. D. D. Murphy, a crosstie dealer of Florala, Ala., by intervening petition, alleges that he is entitled to any reparation that may be awarded in connection with the shipments described in No. 8045. Rates are stated herein in cents per 100 pounds.

No. 8045 relates to the rates charged on 86 carloads of crossties shipped from Wing and Falco to Pensacola. These shipments moved by way of the Florida, Alabama & Gulf Railroad to Galliver,

¹ The proceeding also embraces complaint in No. 8046, G. S. Baxter & Company v. Louisville & Nashville Railroad Company.

Fla., and the Louisville & Nashville Railroad beyond. No joint through rate was in effect. Charges were collected on 23 of these shipments which moved prior to September 24, 1914, at a combination rate of 9 cents: 2 cents to Galliver and 7 cents beyond. On September 24, 1914, the component from Galliver to Pensacola was reduced to 5 cents, and charges were collected on the 13 carloads moving subsequently to that date at the combination rate of 7 cents. The freight charges on all of these shipments were paid and borne by the consignor, D. D. Murphy. A combination rate of 6.5 cents, composed of a rate of 2 cents to Galliver and a rate of 4.5 cents beyond, applied and still applies on pine lumber in carloads from Wing and Falco to Pensacola over the route of movement.

No. 8046 relates to the rates maintained by the Louisville & Nashville Railroad on crossties to Pensacola from stations on its line, Montgomery, Ala., to Valetta, Ala., inclusive; Bulgosa, Ala., to Graceville, Fla., inclusive; Onycha, Ala., to Paxton, Fla., inclusive; Stapleton, Ala., to Foley, Ala., inclusive; Escambia Junction, Ala., to Selma, Ala., inclusive; Vinel, Ala., to Camden, Ala., inclusive; and Lakewood, Fla. Shipments to Pensacola from the Florida points of origin involved move through the state of Alabama. The two carloads of crossties described in this complaint were shipped by way of the Louisville & Nashville Railroad from Watson to Pensacola on June 24, 1914, consigned by J. W. Cunningham to Baxter & Company. Charges were collected thereon at a rate of 26 cents. The fifth-class rate of 34 cents was legally applicable, so that these shipments were undercharged 8 cents per 100 pounds. These ties were sold f. o. b. Pensacola, but the consignees paid the freight charges in the first instance and they have not been fully reimbursed by the consignor. Baxter & Company have received from the vendor, J. W. Cunningham, an assignment of whatever interest he may have in the recovery of reparation in this proceeding. On February 22, 1915, a commodity rate of 8 cents was established from Watson to Pensacola and this rate is still in effect. The Louisville & Nashville is willing to make reparation on these shipments on the basis of the present rate. A rate of 6 cents applied and still applies on pine lumber from Watson to Pensacola. The rates on lumber from the other points of origin to Pensacola are from one-half cent to 3 cents lower than the corresponding rates on crossties.

The witness for the Louisville & Nashville Railroad testified that the rates on lumber from the points of origin are abnormally low and were made to meet water competition; that the competitive influences do not exist as to crossties because they do not move by water between the points referred to; and that the rates on crossties are made with relation to the water compelled rates on lumber and

are lower than the rates that would be maintained on either crossties or lumber in the absence of water competition. Numerous exhibits are submitted by this defendant which show that the rates assailed are lower than the rates on lumber and crossties for corresponding distances in other territories where transportation conditions are said to be more favorable.

We have repeatedly held that the rates on crossties between given points should not exceed the rates contemporaneously in effect on lumber of the kind of wood from which the crossties are made, and in no case have we made an exception to this rule.

We find that the rates assailed were, are, and for the future will be unreasonable to the extent that they exceeded, and may exceed, the rates contemporaneously applicable from and to the same points on lumber of the kind of wood from which the ties are made. We further find that the shipments of pine crossties from Wing, Falco, and Watson to Pensacola were made as described, and that the charges collected thereon were unreasonable to the extent that they exceeded the charges that would have accrued at the respective rates contemporaneously maintained from Wing, Falco, and Watson to Pensacola on pine lumber in carloads; that damages have resulted to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found to have been reasonable; and that D. D. Murphy is entitled to reparation, with interest, on the shipments described in No. 8045, and that G. S. Baxter, W. Ferguson, jr., and W. F. Jones are entitled to reparation, with interest, on the shipments described in No. 8046.

The exact amount of reparation due can not be determined on the present record. Complainants and intervenor accordingly should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation. The Louisville & Nashville Railroad Company may waive the collection of the undercharges mentioned.

An appropriate order will be entered.

43 I. C. C.

No. 8329.
CADILLAC LUMBER EXCHANGE
v.
ANN ARBOR RAILROAD COMPANY ET AL

Submitted December 2, 1916. Decided April 2, 1917.

Rates on lumber and other forest products from Cadillac and Jennings, in the state of Michigan, to interstate points east, south, and west thereof found to be just and reasonable and not shown to be unduly prejudicial or disadvantageous to the complainants. Complaint dismissed.

Ernest L. Ewing for complainants.

Hal H. Smith for Saginaw Valley Lumber Dealers Association.

Cassoday, Butler, Lamb & Foster; F. M. Ducker; C. R. Hillyer; and *Beverly B. Vedder* for Northern Hemlock & Hardwood Manufacturers Association.

James H. Campbell, E. M. Davis, H. R. Griswold, and H. S. Bradley for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

Cadillac and Jennings, inland points near the center of the southern peninsula of the state of Michigan, seek in this proceeding a readjustment of their rates on lumber and other forest products.

The present rates are alleged to be unreasonable and to subject the members of the complainant association to an unlawful prejudice and disadvantage to the preference and advantage of their competitors. As stated in their brief, the question the complainants present is—

Are the rates that apply to the transportation of lumber and other forest products from Cadillac and Jennings * * * and from other and competing places of lumber production in Michigan and Wisconsin properly and equitably adjusted in relation to each other?

Specifically it is claimed that the present adjustment is unlawful because (a) the rates from Cadillac and Jennings to points west of the Indiana-Illinois state line exceed the rates from Bay City and Saginaw and other points in the state of Michigan; (b) the rates from the two points of origin to points in central freight association territory relatively and actually exceed the rates from points west of Lake Michigan; (c) to the western termini of the trunk line carriers and points taking the same rates Cadillac and Jen-

43 L. C. C.

nings are grouped with points west of Lake Michigan; and (d) their rates to points in central freight association territory, including those in the state of Illinois, are the sixth-class rates, while commodity rates less than sixth class are maintained on lumber and forest products from competing points in Michigan.

These specific issues are more or less related, and the inquiry they suggest is whether in its effect on this traffic water competition, actual or potential, is sufficient to justify the existing rate relationships. Interventions in opposition to the prayer of the complaint were filed on behalf of 82 lumber manufacturers in Wisconsin and the upper peninsula of the state of Michigan and also by other lumber manufacturers at Bay City, Saginaw, and points in the lower peninsula.

That lumber-producing points on the lake may and do ship by water is undisputed. Nevertheless the volume of the lake movement is steadily decreasing year by year. At Chicago, for example, in 1908 about one-fifth as much lumber was received by water as by rail; in 1915 the water movement was only about 5 per cent of the all-rail movement. The rail carriers not only have met the water rates but several causes contribute to enable them to secure an increasing proportion of the traffic. At Bay City and Saginaw, for example, the transit rules permit lower final rates on the inbound logs only when the outbound movement of the lumber or other products is by rail; some kinds of lumber, like finished flooring, do not ordinarily move by water; moreover the lumber production is now farther inland than was formerly the case; and, lastly, the higher war rates have lured a number of boats from the lakes to the ocean. There is a still active competition by water, however, and should the rail rates be increased shippers would undoubtedly immediately avail themselves of the water routes and rates more than they now do, with a probable resulting increase in the facilities for water transportation. Although, as before stated, flooring may not be shipped by water, this is not true of the rough board from which the flooring is made; and whatever affects the rates on the rough material has its influence in fixing the rates on the finished product.

In official classification territory lumber is rated sixth class, and under the general conclusions announced in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, increases were permitted in all the class rates. Lumber in that territory, therefore, now moves upon an increased rate basis applying on the class to which it belongs.

As to the adjustment to points west of the Indiana-Illinois state line, the rates to Chicago may be taken as illustrative. In exhibits offered in evidence by the complainants the average distance from 15 points in the state of Michigan, 10 of which are directly on the lake shore, is computed at 396 miles, the average rate being 12.8 cents per

100 pounds; from Cadillac the average distance to Chicago is 325 miles and the rate is 13.1 cents by all routes except the car-ferry route, over which the rate is 12.6 cents. The rates from Cadillac, Bay City, and Saginaw are on the sixth-class basis; north of the first two of these shipping points are other lumber centers taking differential rates on a basis slightly lower than sixth class. Jennings, on a branch line grouped with Cadillac, over one route is somewhat more distant from Chicago than is Cadillac. The sixth-class local rates when applied to shipments to Mississippi River points result in an average rate from Cadillac of 18.1 cents, and from Bay City, directly on the bay shore, 16.8 cents; a similar relationship exists between the proportional rates. In this and other comparisons, however, the complainants disregard the fact that lumber actually originates at Cadillac and Jennings, while the product shipped from Bay City and Saginaw originated in the interior, and the rates paid on the logs and rough lumber to those points, when added to their outbound rates, make through charges equal to or in excess of the charges paid by the complainants' members.

From points in the upper peninsula of Michigan and in Wisconsin and Minnesota the rates to points in central freight association territory are usually commodity rates. They are made by the western rail lines and not only are they influenced by water competition but they are affected also by the relationship of the rates as between Chicago and Milwaukee and are in part group rates. The method of making rates from this originating territory differs widely from that adopted in making rates from Cadillac and the information as to relative transportation conditions shown upon this record is meager. The complainants' summary of one of their exhibits follows:

From—	To Chicago.		To Peoria.		To St. Louis.		To Cairo.	
	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.	Miles.	Rate.
19 producing points in Wisconsin, Michigan, and Minnesota.....	287	9.9	456	15.4	588	18	665	20.1
Cadillac.....	297	12.6	418	17.9	682	18.4	615	20
	288	13.1	.....	.....	.....	.....	.....	.....

¹Car-ferry distance and rate through Mantowoc and Milwaukee.

The rates from the 19 points to Chicago are directly influenced by the rate relationship of Chicago to Milwaukee and by the location of Chicago on Lake Michigan; the rates to Peoria are influenced by the Chicago rates and the rates paid by the complainants to St. Louis and Cairo are fairly related to the rates paid by shippers of lumber from the 19 points. Four or five of these selected points of origin are located on the lakes. Some of the 19 points are grouped

for rate-making purposes; for example, from 7 of them the rate to Chicago is 11 cents, while from 6 of them a rate of 8.5 cents applies.

The rates from points on the west shore of Lake Michigan, referred to here as bay shore points, are generally the same to destinations at the western termini of the trunk line carriers as the rates from Cadillac and Jennings. Ludington, on the east shore of the lake, and Bay City and Saginaw on Lake Huron, both being nearer to these destinations than Cadillac, have lower rates than apply from the complaining markets. This relationship is illustrated by one of the exhibits offered in evidence by the complainants, a portion of which follows:

To—	From Cadillac and Jennings.		From Bay City and Saginaw.		From Ludington.		From bay shore points.	
	Lumber.	Sixth class.	Lumber.	Sixth class.	Lumber.	Sixth class.	Lumber.	Sixth class.
Allegheny, Pa.	17.9	17.9	14.7	14.7	15.8	17.9	17.9	19.9
Buffalo, N. Y.	17.9	17.9	12.6	14.7	15.8	15.8	14.8	17.8

The defendants agreed to adjust the rates to Buffalo and to any other destination taking rates from the bay shore points that are lower than those paid by the complainants. It is expected that this will be done without increasing any rates. All the rates that are lower, either relatively or absolutely, than the rates paid by the complainants are from points where water competition actually exists. In connection with this adjustment attention is called to the fact that while with respect to rates to the east Cadillac and Jennings are grouped with the bay shore points, a similar adjustment is not accorded on rates to the west. This also is the result of the inland location of the complainant cities. It is true that under substantially similar circumstances and conditions the rates in opposite directions should be the same, but it does not follow from a mere difference in such rates, especially under the circumstances here shown to exist, that the westbound rates are unreasonable or that the eastbound rates are unjustly discriminatory. *Parlin & Orendorff Co. v. S. P. Co.*, 42 I. C. C., 29.

Since the classification basis applies generally from Cadillac and Jennings, the complainants contend that a different basis from the lake shore points is unjust. The classification basis is usually applied from Bay City and Saginaw, and the points from which the basis is generally not applied are given a relationship with the Bay City rates. The measure of some of the rates here involved was before us in *Lumber from Michigan Points*, 86 I. C. C., 184. In that case we found that a rate of 11 cents per 100 pounds from Cadillac to Toledo was reasonable; the issue, here before us, of the relationship

of the rates was not determined. The defendants propose some slight changes in the existing relationship of the rates from Cadillac and Bay City; these changes involve some increases, the propriety of which is not now before us.

The rates paid by the complainants differ in amount and in the ton-mile earnings from the rates paid by some of their competitors, as is shown by selecting certain rates from the tariffs. These differences are at least influenced by, if they are not the forced result of, water competition at some points that is lacking at Cadillac and Jennings. No testimony other than the statement of their inequality was offered to show that the rates assailed are unreasonable or otherwise unlawful. The dissimilarity in the circumstances and conditions surrounding the traffic prevent the lower rates from being accepted as a standard. As heretofore stated, in *The Five Per Cent Case, supra*, an increase in the class rates was justified; and the classification basis is generally adopted except where special circumstances require a departure from it. The proven and admitted present existence of water competition, with the constant possibility that it may become stronger, are facts differentiating the complainants' situation from the situation of those using the rates with which comparisons are made.

From all the facts of record we find that the defendants have met the burden of proof as to the reasonableness of the rates assailed and that no undue prejudice or disadvantage to complainants' members have been shown to exist. An order dismissing the complaint will be entered.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 895.
NEW ENGLAND LUMBER RATES (No. 2).

Submitted January 18, 1917. Decided April 2, 1917.

Respondents have established the propriety of proposed increased rates on lumber and articles taking the lumber rates from points of production in the state of Maine and in eastern Canada to destinations in central and southern New England and in the eastern part of the state of New York.

Henry J. Hart, Charles H. Blatchford, G. H. Eaton, E. C. Ryder, and R. E. Perry for respondents.

Dunbar, Nutter & McClennen; George R. Nutter; Jacob J. Kaplan; P. B. Bennett; S. H. Boardman; F. C. Gifford; Herbert Buckley; Robert Cushman; and W. S. Phippen for protestants.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In the northern part of the state of Maine and in southeastern Canada are extensive forests of spruce timber, the manufacture of which into wood pulp and lumber constitutes the principal occupation of the inhabitants of that region. On the numerous rivers flowing through the territory are sawmills, where the spruce logs are converted into lumber and shipped principally to the cities in central and southern New England.

Four of the carriers serving this territory, the Bangor & Aroostook Railroad Company, the Maine Central Railroad Company, the Canadian Pacific Railway Company, and the Canadian Government Railways, are before us here in support of their proposals to increase the rates on lumber and articles taking the lumber rates, from certain points of origin on their lines in the northern part of the state of Maine and in eastern Canada to points of destination in the states of Massachusetts, Rhode Island, and Connecticut, and to a number of stations in the eastern part of the state of New York. The proposed rates are opposed under protests made by various lumber companies and associations. Before proceeding to examine separately the tariffs filed by each of the respondent carriers, it may be well to call attention to certain considerations of a general character that will serve as a background for the details to follow.

In the first place it should be stated that the market for the New England lumber is restricted to the New England states and the eastern part of the state of New York. Even in this territory it meets

severe competition, especially on low-grade boards and "roofers" from the Carolinas, which are laid down at points on Long Island Sound and even at interior points in New England at prices which the New England producers despair of meeting. In dimension timbers and the higher grade lumber used in building, New England, on the other hand, apparently has an advantage which the Carolinas are unable to overcome. When bottoms were plentiful and ocean rates low fir from the Pacific coast was shipped to New England and sold there at relatively low prices. Spruce from eastern Canada and hemlock from Pennsylvania also contribute to the competition which the protestants in this proceeding must meet.

Both the protestants and the respondents direct our attention to the rising level of prices and the increasing cost of operation; the protestants for the purpose of impressing upon us the inadvisability of adding an increase in freight rates to their competitive and other difficulties; the respondents for the purpose of showing that only an increase in their revenues can prevent the further narrowing of the margin between their receipts and expenses. The price of stumpage has almost trebled in the last 20 years and more recently there have been material increases in the cost of labor and supplies. The Bangor & Aroostook Railroad, on the other hand, estimates that the increase in the cost of necessary materials for the current fiscal year will be between \$85,000 and \$100,000; while the Maine Central estimates that its operating expenses for the current year will be \$1,040,000 in excess of those for the previous year. The respondents remind us, also, that our findings in *The Five Per Cent Case*, 32 I. C. C., 325, did not apply to the rates here under consideration, although rates from competing territories were increased under the conclusions reached in that case. At the time of the hearing the value of spruce lumber was between \$29 and \$30 per thousand feet, the highest price ever attained.

We proceed now to a consideration of the increases proposed by each of the four originating carriers.

THE BANGOR & AROOSTOOK RAILROAD COMPANY.

The Bangor & Aroostook traverses a sparsely settled region in which the operating conditions are anything but favorable. The largest town on its rails is Houlton, in the state of Maine, with a population of 5,800. In the part of its territory where lumber is most extensively produced it is necessary to contend with heavy falls of snow throughout the winter months, and the extremely low temperature presents serious problems to the carrier's operating department. Like most lines extending through a sparsely settled

territory, the Bangor & Aroostook derives its revenues from the transportation of a few commodities. Products of the forest constitute more than 41 per cent of its total freight traffic, lumber alone furnishing 22.8 per cent; while the products of agriculture amount to more than 23 per cent of the total tonnage.

In constructing the rates on lumber from points on its line to southern New England this respondent has divided the territory of origin into a number of rate groups. The largest shipping points are Van Buren and Keegan, in the extreme northern part of the state of Maine on the St. John River, in what is known as the Van Buren group, which extends as far as Phair, approximately 55 miles south. There are several other similar groups, varying somewhat in size, and in most instances the rates from a given group exceed by one-half cent the rates from the group adjoining it on the south. In the following table, compiled from one of respondents' exhibits, are shown the present rates and the proposed rates from Van Buren and Houlton, representative points of two groups on the Bangor & Aroostook Railroad, to typical destinations, together with the distances and the earnings per car-mile:

To—	From Van Buren, Me.					From Houlton, Me.				
	Miles.	Present rate.	Present earning per car-mile. ¹	Proposed rate.	Proposed earning per car-mile. ¹	Miles.	Present rate.	Present earning per car-mile. ¹	Proposed rate.	Proposed earning per car-mile. ¹
		Cents.	Cents.	Cents.	Cents.		Cents.	Cents.	Cents.	Cents.
Boston, Mass.....	456.1	15	13.81	16	14.73	371.7	14	15.82	15	16.95
Springfield, Mass.....	553	16	12.15	17	12.91	468.6	15	13.44	16	14.34
Troy, N. Y.....	609	15	10.34	17	11.72	524.6	14	11.21	16	12.81
Providence, R. I.....	527	17	13.55	19	15.14	442.6	16	15.18	18	17.08
New Haven, Conn.....	612	18	12.35	20.5	14.07	527.6	17	13.53	19.5	15.52
Hartford, Conn.....	564	20	14.89	19	14.15	479.6	19	16.64	18	15.29
Harlem River, N. Y..	680	18	11.12	21.5	13.2	595.6	17	11.99	20.5	14.36

¹ Based on average loading of 42,000 pounds.

Points on the Boston & Maine Railroad, such as Boston and Springfield, in the state of Massachusetts, and Troy, in the state of New York, may be reached from Van Buren and Houlton only by a three-line haul; and the haul to destinations on the New York, New Haven & Hartford Railroad requires the participation of four carriers. The rates to the latter territory are especially important to the protestants not only because the numerous cities on the New Haven near Long Island Sound offer an excellent market for lumber, but because the competition of southern lumber is felt most keenly at the points reached by water. It will be observed that the increases proposed to these points, of which New Haven and Harlem River are typical, greatly exceed the increases to destinations in the interior.

The Bangor & Aroostook reaches tidewater at Stockton harbor, in the state of Maine, at which point it may transfer lumber to boats and barges for delivery at any points conveniently reached by water. For a number of years it has published relatively low all-rail rates to points on Long Island Sound to enable its connections to compete with the water carriers, but it is to the advantage of the Bangor & Aroostook to have its lumber transferred to vessels at Stockton harbor because the prompt return of its equipment is thereby assured, whereas it may be deprived indefinitely of the use of its cars, especially during periods of car shortage, if they are turned over to connecting lines for an all-rail movement.

Because of the scarcity of bottoms at the present time and the consequent increase in the rates by water from Stockton harbor to points on Long Island Sound, the present all-rail rates on lumber from points on the Bangor & Aroostook to those destinations are lower than the rail-and-water rates. The rate from Van Buren to Stockton harbor is said to be equivalent to \$2 per thousand feet. The present rate by water from Stockton harbor to Harlem River is approximately \$4.50 per thousand feet. There are other costs, for handling and insurance, amounting to approximately 75 cents per thousand feet, making the total rail-and-water cost from Van Buren to Harlem River approximately \$7.25 per thousand feet. The present all-rail rate of 18 cents per 100 pounds from Van Buren to Harlem River is approximately \$5.40 per thousand feet, while the proposed rate of 21.5 cents per 100 pounds is equivalent to \$6.45 per thousand feet. It will be seen that even the proposed all-rail rate produces a lower aggregate charge than the rail-and-water combination.

The protestants do not deny that the all-rail rates in question were directly affected by water competition, but they feel that the carriers should not be permitted to abandon their policy of meeting the water competition, especially because of the long maintenance of the rates and the commercial necessities of the lumber dealers and manufacturers. The Commission has frequently expressed the view, however, that it may not require the maintenance of low rates whose publication is directly attributable to competitive influences. That thought found expression, for example, in *Rates on Scrap Iron From Gulf Ports*, 33 I. C. C., 668, where the Commission said:

It is further urged that water competition still exists and for that reason the rail rates should not be increased. We have uniformly held that it is for the carrier to determine whether or not it will meet such competition. If it elects to discontinue this practice at any point and increase its rates, we are concerned only in the question whether or not the increased rates are just, reasonable, and proper.

The same conclusion must be reached in the case now before us. The rates and earnings to the points in question can not be regarded as excessive for the service performed, especially when consideration is given to the difficulties of operation experienced by the initial line, the fact that a four-line haul is involved, and the further fact that the proposed rates are lower than the lowest available rates by water and rail.

Until the publication of the tariffs under suspension the rates to points on the New Haven were not made on a logical or consistent basis. The proposed rates to those points are constructed by adding certain factors, based on mileage, to the rates to the junction points such as Northampton, Springfield, and Worcester, all in the state of Massachusetts, at which the lumber is turned over to the New Haven by the Boston & Maine. These arbitraries over the junction point rates are as follows:¹

	Cents.
For distances up to 35 miles.....	2
36 miles to 60 miles.....	3
61 miles to 85 miles.....	3½
86 miles to 110 miles.....	4
111 miles to 140 miles.....	4½
Over 140 miles (except New York, N. Y.).....	5

These additions to the rates to the junction points, referred to as arbitraries throughout the record, and for convenience so designated in this report, are not published as arbitraries; they are simply factors used by the respondents in compiling the tariffs under consideration. They have been discussed at length upon the record, and a number of the protestants regard the increase in the arbitraries as peculiarly prejudicial to their interests. Lumber is usually sold in New England on the Boston basis; that is to say, the Boston price is the standard price and includes the freight rate to Boston. The price of lumber at more distant points, such as Providence, in the state of Rhode Island, is determined by adding to the Boston price the amount of the so-called arbitrary, the rate to Boston being usually the same as the rate to the junction points previously mentioned. If the rate to Boston is 15 cents and the rate to Providence is 17 cents, the price of lumber in Providence will be higher than the Boston price by approximately 2 cents per 100 pounds, or 60 cents per thousand feet. If the arbitrary is increased from 2 cents to 3 cents there will be a corresponding increase in the price of lumber at Providence, making it more difficult for the New England

¹ The New York, New Haven & Hartford Railroad uniformly receives as its divisions 2 cents per 100 pounds more than the arbitraries here shown, the other lines shrinking their earnings by that amount.

manufacturers to sell their product at that point in competition with lumber from other producing sections. In the tariffs under suspension in this proceeding the arbitraries are increased. At the present time, for example, the rate from Van Buren to Boston and the other junction points is 15 cents, and the rate to Harlem River is 18 cents, making the arbitrary 3 cents and the price at Harlem River approximately 90 cents per thousand feet higher than the Boston price. In the suspended tariff the proposed rate from Van Buren to Boston is 16 cents and to Harlem River 21½ cents, making the arbitrary 5½ cents and the price at Harlem River approximately \$1.65 per thousand feet higher than the Boston price.

Manifestly, the only question presented here for our determination is the propriety of the proposed through rates; and the amount of the arbitraries can not be regarded as an issue in this proceeding. Admitting that the amount of the arbitraries is of peculiar interest to these protestants because of the method in vogue for fixing the lumber prices, it is clear that commercial considerations of that character can not be regarded as controlling in determining the reasonableness of the proposed rates for the service performed.

The Bangor & Aroostook relies in part upon its financial condition in justification of the rates proposed. An unusually large percentage of its outstanding securities consists of bonds and car trust obligations, which amount to \$25,521,000, while the capital stock aggregates only \$3,448,600. The company has regularly paid 5 per cent interest on its bonds. For the five years beginning with 1908 it paid dividends of 4 per cent. During the past four years the dividend has been 3 per cent each year, except 1914, when it was 3½ per cent. These earnings can not be regarded as excessive, and assuming that the road is not overcapitalized they can hardly be regarded as constituting an adequate return upon the carrier's investment. The surplus at the end of the last fiscal year was \$403,956.19, which the company regards as inadequate.

The Bangor & Aroostook attaches some importance also to the fact that its proposed rates constitute a part of a comprehensive rate structure, and it contends that their propriety can not be determined without taking into consideration the rates of other carriers serving the same general territory. The Canadian Government Railways traverse the region immediately north of that served by the Bangor & Aroostook, and on the Canadian side of the St. John River the lines of the two companies parallel each other for some distance. Prior to the filing of the tariffs suspended in this proceeding the rates from stations on the Canadian Government Railways were materially higher than the rates from points on the Bangor & Aroostook,

so much higher, in fact, that they were regarded by the Canadian shippers as unduly prejudicial.

When advised that the New England lines were about to propose new rates on lumber to points in southern New England the Canadian Government Railways undertook a complete revision of their rates to points on the line of the New York, New Haven & Hartford Railroad, publishing many new rates, increasing some, reducing others, and endeavoring to bring their whole adjustment more nearly into harmony with that of the New England lines. Their tariff, which was suspended with those of the Bangor & Aroostook, the Maine Central, and the Canadian Pacific, is constructed on the same basis as those of the other carriers; and for equal distances the new rates are practically the same as those proposed by the other respondents. No protest whatever was made against the rates proposed by the Canadian Government Railways, and many shippers have expressly approved them. A question asked at the hearing, which was largely attended by lumber dealers and manufacturers, as to whether there was any objection to these rates met with no response; but later a representative of John Fenderson & Company, a Canadian corporation manufacturing lumber at Sayabec, Val Brilliant, Amqui, and Lac au Saumon, on the Canadian Government Railways in the province of Quebec, expressed its approval of the adjustment proposed and asked that it be permitted to become effective, principally because it is substantially the same as that proposed by the Bangor & Aroostook, thereby eliminating the undue preference which shippers on the line of the latter carrier are thought to have enjoyed. Subsequently the Canadian Government Railways requested the Commission to permit their proposed adjustment to become effective, and the orders previously entered suspending the operation of those rates were vacated. Our attention is also directed to the fact that the Temiscouata Railway, which also parallels the Bangor & Aroostook on the Canadian side of the St. John River, and extends from Edmundston Junction to Riviere du Loup, in the province of Quebec, filed a tariff similar to those filed by the other originating carriers, and that it has become effective without protest.

THE MAINE CENTRAL RAILROAD.

The principal increases proposed by the Maine Central Railroad may be roughly divided into two classes, (a) those which result from a revision of the rates from branch lines and from a regrouping of producing points, and (b) those to points on the New York, New Haven & Hartford Railroad resulting from the application of the mileage arbitraries previously mentioned.

In *New England Lumber Rates*, 31 I. C. C., 553, we approved certain increased rates on lumber from points on the Maine Central to points on the Boston & Maine. As a result of the readjustment proposed by the Maine Central in this proceeding some of the rates from branch-line stations on the line of that carrier to points on the Boston & Maine are further increased in the tariffs under suspension.

A large part of the Maine Central within the state of Maine consists of branch lines, extending to such points as Rockland, Belfast, Dover, Harmony, Skowhegan, Kineo station, and Kennebago. It has been this carrier's practice to apply the same rates from a number of these branch lines as from Bangor, disregarding the additional service performed. In the tariff under suspension it is proposed to make the rates from most of the branch lines one-half cent higher than the Bangor rate. On the Dover branch, for example, the rate to Boston is increased from 12 cents to 12½ cents. The same adjustment is made on the Harmony branch, which is similarly located. From stations on the Kineo branch north of Solon it is proposed to increase the rates by one-half cent, making them from 1½ cents to 2½ cents higher than the rate from Bangor, and a corresponding change is made from Frye to Oquossoc on the Kennebago branch. The rates from stations on these branch lines do not seem to have been constructed upon a uniform basis, and the respondents concede that some of them could be changed with advantage. No particular objection is made by shippers, however, to the relationship between the rates from the various branch lines, except as hereinafter indicated.

On the line running northeast from Bangor the Bangor rates now apply as far as Lincoln, while the rates from stations east of Lincoln as far as Vanceboro are 1 cent higher, the two groups extending approximately 119 miles. These groups were considered somewhat large, and it is proposed to divide the stations in question into three groups instead of two, the rates being one-half cent, 1 cent, and 1½ cents higher than the rates from Bangor. Other readjustments somewhat similar in character have been made. One of the protestants calls attention to the fact that the proposed rates from points on the Belfast branch are 1 cent higher than the rates from points on the main line. This respondent concedes that a spread of one-half cent would be more consistent, and expressed its willingness to bring about that result by increasing the rate from the Belfast branch by one-half cent instead of 1 cent.

The following table shows the distances, the present and proposed rates, and the earnings per car-mile from Vanceboro, Harmony, and Deadwater, typical points on the Maine Central in the state of Maine, to representative destinations. In considering the earnings

it should be borne in mind that Harmony and Deadwater are on branch lines; that a two-line haul is involved to all stations on the Boston & Maine; and that points on the New Haven may be reached only by a three-line haul:

From—	Miles.	Present rate.	Present earning per car-mile. ¹	Proposed rate.	Proposed earning per car-mile. ¹
		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Vanceboro to—					
Springfield, Mass.....	456	14	13.8	14.5	14.3
Worcester, Mass.....	386	13	15.2	13.5	15.7
Troy, N. Y.....	512	14	12.3	14.5	12.7
Providence, R. I.....	430	15	15.7	16.5	17.3
New Haven, Conn.....	515	15	13.1	18	15.7
Hartford, Conn.....	467	17.5	16.9	16.5	15.8
Harlem River, N. Y.....	582	15	11.6	19	14.6
Harmony to—					
Springfield, Mass.....	325	13	18	13.5	18.7
Worcester, Mass.....	255	12	21.2	12.5	22
Troy, N. Y.....	381	14	16.5	14	16.5
Providence, R. I.....	299	14	21.1	15.5	23.3
New Haven, Conn.....	384	15	17.6	17	19.9
Hartford, Conn.....	336	16.5	22.1	15.5	20.7
Harlem River, N. Y.....	452	15	14.9	17	16.8
Deadwater to—					
Springfield, Mass.....	332	14	18.9	14.5	19.6
Worcester, Mass.....	262	13	22.3	13.5	23.2
Troy, N. Y.....	388	14	16.2	14.5	16.8
Providence, R. I.....	306	14.5	21.3	16.5	24.2
New Haven, Conn.....	391	15	17.3	18	20.7
Hartford, Conn.....	343	17	22.3	16.5	21.6
Harlem River, N. Y.....	459	15	14.7	19	18.6

¹Based on loading of 45,000 pounds per car.

It is estimated that the increase in revenue that would accrue under the proposed rates to the carriers participating in the movement would amount to 2.04 per cent on traffic to stations on the Boston & Maine and 4.6 per cent to stations on the New Haven.

Athough lumber moves from New England to points west of the Hudson River on full sixth-class rates, the rates proposed in the tariff under suspension are in most instances less than sixth class. The proposed rates and the sixth-class rates from Vanceboro to representative destinations are as follows:

	Proposed rate on lumber.	Sixth-class rate.
Boston, Mas.....	13½	17
Worcester, Mass.....	13½	18
Fitchburg, Mass.....	13½	18
Springfield, Mass.....	14½	18

This respondent emphasizes the importance of the increases in the cost of the materials which it uses, “beginning with lead pencils and ending with fuel.” As previously stated, it estimates that its operating expenses for the current year will be greater by \$1,040,000 than those of the preceding year, and it contends that lumber, one

of the principal commodities which it carries, should bear at least a part of the additional expense.

THE CANADIAN PACIFIC RAILWAY.

What is known as the Atlantic division of the Canadian Pacific Railway embraces the lines of that carrier east of Megantic, in the province of Quebec. Like the Bangor & Aroostook, with which it connects at a number of points, it traverses a sparsely settled territory, the inhabitants of which are engaged principally in forestry, in the manufacture of lumber, and in farming. The principal tonnage consists of lumber, potatoes, hay, and starch. The lumber traffic amounts to approximately 200,000 tons annually; of potatoes there are 70,000 tons, of hay 6,000 tons, and of starch 1,000 tons. The inbound tonnage, consisting largely of fertilizer and cement, is very light.

The only important lumber-shipping points on the line of this carrier in the United States are Jackman and Presque Isle, both in the state of Maine. Attention was centered at the hearing particularly upon the rates from points in Canada on the line extending north from McAdam, New Brunswick, to Edmundston, in the province of Quebec. Increases ranging from 1 cent to 2½ cents per 100 pounds are proposed from points on the Atlantic division to destinations in central and southern New England.

The following table, compiled in part from one of the exhibits filed of record by this respondent, shows the present and proposed rates and the distances from Hartland, in the province of New Brunswick, a representative shipping point, to typical destinations, together with the earnings per ton-mile and per car-mile:

From Hartland, New Brunswick, to—	Miles.	Present rate.	Proposed rate.	Present earning per ton-mile.	Proposed earning per ton-mile.	Present earning per car-mile. ¹	Proposed earning per car-mile. ¹
		Cents.	Cents.	Mills.	Mills.	Cents.	Cents.
Boston.....	426	14	15	6.6	7	12.8	14.8
Springfield.....	536	15	16	5.7	6.1	12	12.8
Providence.....	590	16	18	6.4	7.2	12.5	15.1
Hartford.....	537	19	18	7.1	6.7	14.9	14.1
New London.....	517	17	18.5	6.5	7.1	12.8	15.1
New Haven.....	545	17	19.5	5.8	6.6	12.2	16
Troy.....	552	14	16	4.8	5.5	10.1	11.5

¹ Based on average loading of 42,150 pounds.

The rates proposed from these Canadian Pacific stations are lower than the rates to the same destinations from shipping points on the line of the same carrier west of Megantic. The proposed rate from Jackman to Springfield, 879 miles, is 15½ cents; the present rate from Lanoraie, in the province of Quebec, west of Megantic, to the same

destination is 16.8 cents, the distance being exactly the same. The proposed rate from Jackman to Boston, 380 miles, is 14½ cents; the present rate to Boston from Ste. Adele, in the province of Quebec, west of Megantic, is 17.9 cents, the distance being 379 miles. One of the exhibits offered in evidence by this respondent shows that these comparisons showing a similar relationship may be extended almost indefinitely. Moreover, the rates from the stations west of Megantic were recently increased 5 per cent, while no corresponding increase has been made in the rates from stations on the Atlantic division.

With respect to the financial condition of its Atlantic division the Canadian Pacific refers us to the report of the Board of Railway Commissioners for Canada in what is known as the *Eastern Rates Case*.¹ In dealing with the need of the carriers in eastern Canada for additional revenue the Canadian commission, speaking through the chief commissioner, said:

The Atlantic division includes all the lines between St. John in the east and Megantic, Quebec. * * * In the same two years (1913 and 1914) the gross earnings on the Atlantic division amounted to \$2,336,002 and \$2,297,485, respectively. Speaking generally, the Atlantic division is operated at a loss, the operating ratio running from 98.7 cents in 1909 to 110.3 cents in 1912. This ratio, of course, just simply means the expenses incident to earning \$1 of revenue, with the result that in the first instance, the company netted over and above its operating expenses 1.3 cents and in the next instance was out of pocket 10.3 cents for each dollar that it took in.

In so far as the Atlantic division is concerned, if the Canadian Pacific's figures were to be accepted throughout, a prima facie case is made out for very radical advances in all rates.

The contention that the rates published by each of the initial lines should be regarded as but a part of a comprehensive rate structure applies with particular force to the Canadian Pacific Railway. The part of its line traversing the state of Maine crosses the line of the Maine Central at two points and forms a connection with it at Vanceboro. The line extending north from McAdam to Edmundston parallels the Bangor & Aroostook for nearly the whole distance, and a number of points, such as Houlton, Caribou, Presque Isle, and St. Leonard, are served by both carriers. In several instances also it serves the same territory that is reached by the Canadian Government Railways.

THE CANADIAN GOVERNMENT RAILWAYS.

In the preceding discussion of the rates proposed by the Bangor & Aroostook we pointed out the relationship between the rates of that carrier and the rates of the Canadian Government Railways, referring particularly to the fact that there were no protests filed against

¹ *Canadian Railway Cases*, advanced sheets of July 1, 1916.

the rates of the latter line and that they became effective when the Commission vacated its orders suspending their operation. These rates being no longer under suspension, we may regard their propriety as not being in issue.

THE PROTESTANTS' EVIDENCE.

Most of the evidence submitted by the protestants deals with commercial conditions, and particularly with the difficulties the lumber manufacturers encounter in endeavoring to overcome the ever-increasing cost of production. We are told, for example, that the cost of manufacturing lumber and marketing it so closely approaches the price obtained for it as to leave little or no profit to the manufacturer; and the record abounds with evidence, previously referred to, showing the severity of the competition from other sources of production. Southern lumber reaches Long Island Sound points on an all-rail rate of 15.8 cents from Norfolk, and is sold so successfully in the New England markets that some of the protestants are unable to dispose of their low-grade boards. One of the larger manufacturers has found it necessary, because of his inability to sell his boards at a satisfactory price, to erect a factory for manufacturing them into box material. The protestants unite in expressing the fear that the rate increases proposed will make it still more difficult to overcome the obstacles which confront them, and that the result would be a further restriction of their already limited market. They also emphasize the fact that a number of the rates in question have been considerably increased in recent years.

The following comparison of the present and proposed rates with ton-mile revenues on shipments of lumber to Bridgeport, in the state of Connecticut, from points on the Bangor & Aroostook, may be regarded as illustrative of a number of exhibits filed by the protestants:

To Bridgeport, Conn., from—	Miles.	Present rate.	Proposed rate.	Present earnings per ton-mile.	Proposed earnings per ton-mile.
		<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Mills.</i>
Ashland, Me.....	590	17.5	20	6	6.9
Eagle Lake, Me.....	615	18	20.5	6	6.66
Guilford, Me.....	438	15.25	17.75	7	8.1
Island Falls, Me.....	527	17	19.5	6.45	7.4
Portage, Me.....	592	18	20.5	6	7
Presque Isle, Me.....	599	18	20.5	6	6.84
Shirley, Me.....	450	16	18.5	7	8.1
Van Buren, Me.....	647	18	20.5	5.58	6.33

Other exhibits show that the rate from Van Buren to Boston, for example, which was 13½ cents in 1907, was increased to 15 cents in 1910, and it is now proposed to increase it to 16 cents, making an aggregate increase of more than 2½ cents since 1907. The rates

from many other points of origin to other destinations have likewise been increased materially in recent years. The percentages of increase are, of course, much greater than the absolute increase. The respondents show, however, that the increases in the rates of transportation have not been at all comparable to the increases in the cost of commodities generally; and this is supported by the testimony of the protestants showing that the price of stumpage has increased from approximately \$2 per thousand feet in 1893 to at least \$5 per thousand feet in 1916, an increase of 150 per cent; and that the value of spruce lumber itself has increased from \$12.50 in 1893 to more than \$29 at the time of the hearing, an increase of more than 130 per cent. The respondents show further that a study of the history of the rates covering a somewhat longer period discloses in many instances a result quite different from that suggested by the protestants. In 1898, for example, the rate from Van Buren to Troy was 20.4 cents; the proposed rate is 17 cents. In 1900 the rate from Van Buren to Springfield was 17.1 cents; the proposed rate is 17 cents. In 1901 the rate from Houlton to Hartford was 18.5 cents; the proposed rate is 18 cents. The proposed rate from Van Buren to Harlem River, though 3.5 cents higher than the present rate, is less than 1 cent higher than the rate in effect in 1902.

In determining the issues presented for our consideration in a case of this character we should, in fairness to all of the parties, take a comprehensive view of the whole situation. In gauging the reasonableness of the rates proposed by one of the carriers respondent we must consider the rates of other carriers serving the same general territory; and especially significant in the present proceeding is the fact that the rates of some of these lines are approved by shippers and have already been permitted to become effective. We should consider also the general character of the territory traversed by the respondents' lines, and the fact that they encounter during a part of the year unusual operating difficulties. We must also bear in mind the fact that products of the field and forest constitute a large part of the total tonnage of some of these carriers, and that there are throughout this territory many branch lines with difficulties of operation common to roads constructed through sparsely settled areas. The evidence shows, also, that the rates proposed compare favorably with the rates on lumber in other parts of the country, where the operating conditions can hardly be less favorable than those in the northern part of New England. Upon careful consideration of this evidence, and of the testimony and exhibits submitted by all of the parties, we conclude and find that the respondents have established the propriety of all the rates proposed, except as previously noted, and the orders of suspension will accordingly be vacated.

INVESTIGATION AND SUSPENSION DOCKET No. 862.
JOHNSTOWN, PA., SWITCHING.

No. 8956.

VALLEY SMOKELESS COAL COMPANY ET AL
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted November 2, 1916. Decided April 3, 1917.

1. Proposed increase in through rates on coal from mines on the Johnstown & Stony Creek Railroad, within the Clearfield district, to eastern destinations, found not justified.
2. Refusal of the defendants to apply the Clearfield district rates to eastern interstate destinations on coal from mines served by the Johnstown & Stony Creek Railroad, while extending such rates to other mines generally throughout the Clearfield district, found to result in undue prejudice and disadvantage to complainants.
3. Defendants required to extend the Clearfield district rates to apply from mines of complainants by means of absorption or joint rates which shall not exceed the existing Clearfield district rates to eastern interstate destinations.
4. Reparation awarded.

Morgan, Lewis & Bockius, A. Allen Woodruff, C. E. Morgan, 3d, and Robert D. Jenks for complainants.

Charles S. Belsterling for Johnstown & Stony Creek Railroad Company.

George Stuart Patterson for Pennsylvania Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These cases are related, were consolidated at the hearing, and will be disposed of in this report.

By schedules filed to take effect June 15, 1916, the Johnstown & Stony Creek Railroad Company, hereinafter called the Johnstown & Stony Creek, proposed to increase its charges on all commodities interchanged by it with the Baltimore & Ohio Railroad and the Pennsylvania Railroad at Johnstown, Pa., and moving to or from sidings and industries on or connected with its tracks, from $4\frac{1}{2}$ cents per ton, net or gross, as rated in connecting lines' tariffs, minimum charge 45 cents per car, to $6\frac{1}{2}$ cents per ton, minimum charge 65 cents per car. Upon protest filed by the Valley Smokeless Coal

Company, the Ideal Coal Company, and the Sunnyside Coal Company, the schedules were suspended until October 13, 1916. The suspension was vacated July 8, 1916, except in so far as the suspended schedules seek to increase the rates and charges on coal and coke in carloads originating at points on the lines of the Johnstown & Stony Creek and destined to points on the lines of the Pennsylvania Railroad Company, hereinafter called the Pennsylvania, or to points on other lines reached by the lines of the Pennsylvania as an intermediate carrier. As thus modified, the suspension was later extended to April 13, 1917. All rates on coal herein stated apply to tons of 2,240 pounds, unless otherwise specified.

The Valley Smokeless Coal Company, the Ideal Coal Company, and the Sunnyside Coal Company are corporations owning, or engaged in the operation of, coal mines located on the Johnstown & Stony Creek, or having rail connection therewith, in or near the city of Johnstown. By complaint filed June 5, 1916, they allege: (1) That the through rates on bituminous coal from mines on the Johnstown & Stony Creek to eastern destinations, consisting of the Johnstown & Stony Creek's local rate of 4½ cents plus the Clearfield district rates published by the Pennsylvania, are unjust and unreasonable to the extent that they exceed the district rates; (2) that the Pennsylvania, by refusing to extend the Clearfield district rates on bituminous coal to eastern destinations from coal mines located on the Johnstown & Stony Creek, subjects complainants to undue prejudice and disadvantage and gives to competing coal companies whose mines are located upon other connecting railroads, to which the Pennsylvania extends its Clearfield blanket rates, undue preference and advantage; (3) that the refusal of the Pennsylvania to absorb the local charge of the Johnstown & Stony Creek on outbound coal while absorbing its local charges on all other commodities, inbound and outbound, including inbound coal and coke, subjects outbound coal traffic to undue prejudice and disadvantage. Included in the complaint was the protest upon which we suspended the rate of 6½ cents as stated above. The complaint prayed that the carriers be ordered to cease and desist from the alleged violations of the act. They asked for the establishment of the flat Clearfield rates from complainants' mines, and for reparation.

For many years the Pennsylvania and the Baltimore & Ohio Railroad Company, hereinafter called the Baltimore & Ohio, absorbed the Johnstown & Stony Creek's charges out of the prevailing district rates on all traffic except coal and coke, and except the traffic of the Lorain Steel Company. The stock of the Johnstown & Stony Creek and of the Lorain Steel Company is owned by the Federal Steel Company, a constituent company of the United States Steel

Corporation. Subsequent to the *Industrial Railways Case*, 29 I. C. C., 212, the carriers filed tariffs to become effective April 1, 1914, canceling these absorptions. The cancellations were suspended pending our report in *Second Industrial Railways Case*, 34 I. C. C., 596. Prior to May 8, 1916, the Johnstown & Stony Creek's charge for all interchange traffic, including coal, was \$1.50 per car. On that date, acting upon advice that the trunk lines would absorb 4½ cents per ton out of the prevailing district rates, the Johnstown & Stony Creek changed its local charge from \$1.50 per car to 4½ cents per ton on all carload traffic. The Pennsylvania, by tariffs effective the same date, provided for the absorption of the charge of 4½ cents per ton on all freight, including the traffic of the Lorain Steel Company, but not including coal and coke; and effective May 20, 1916, it provided for the absorption of charges on inbound coal and coke. By the schedules under investigation, filed to become effective June 15, 1916, the Johnstown & Stony Creek proposed to increase its rates from 4½ cents to 6½ cents a ton on all carload traffic. This action followed upon advice that the trunk lines would absorb 6½ cents per ton. By tariffs effective on the same date, the Pennsylvania provided for the absorption of the charge of 6½ cents on all freight except coal and coke; and effective June 20, 1916, it provided for the absorption of charges on inbound coal and coke. There is no outbound movement of coke, and the Pennsylvania never has absorbed the Johnstown & Stony Creek's charges on outbound coal. As stated, the suspension of the schedules carrying the increased charges was vacated except in so far as outbound coal and coke routed by way of the Pennsylvania is concerned.

Johnstown is situated within the bituminous coal producing area of western Pennsylvania, embracing about 8,000 square miles, known for freight rate purposes as the Clearfield district. The Pennsylvania applies a blanket rate on coal from all the mines in this district which are located on its main lines and branches; and the Clearfield district, being the farthest east of the bituminous coal districts, has the lowest rate from Pennsylvania bituminous fields to eastern destinations.

Johnstown is also located in the group of coal-producing stations of the Baltimore & Ohio known as the Meyersdale or Somerset group. From this section the Pennsylvania has no joint rates on coal with the Baltimore & Ohio, upon the flat district basis. Shippers located only upon the Baltimore & Ohio can not ship coal to points on the Pennsylvania at the flat Meyersdale rates, and shippers located only upon the Pennsylvania can not ship at the flat Clearfield rate to points on the Baltimore & Ohio. The Clearfield, Meyersdale, or Somerset district rates while generally the same to

eastern destinations are not always identical. The complainants' principal markets are in eastern Pennsylvania, New Jersey, New York, and New England. Some of the typical destination points involved in this proceeding are South Amboy, Manville, Garwood, and Elizabeth, N. J.

The mines of complainant, the Valley Smokeless Coal Company, are located in the vicinity of Johnstown, and are connected with the Johnstown & Stony Creek and with the Baltimore & Ohio by the private tracks of the coal company. These tracks are available for the movement of traffic to either the Johnstown & Stony Creek or the Baltimore & Ohio, and each with its own power places empty cars at the tipples and takes out the loads. On shipments made directly over the Baltimore & Ohio the Meyersdale district rates are applied. For shipments over the Pennsylvania, however, the inbound empty cars and outbound loads must be switched by the Johnstown & Stony Creek, from or to its present interchange with the Pennsylvania at their junction. The mines of complainants, the Ideal Coal Company and the Sunnyside Coal Company, are located exclusively on the tracks of the Johnstown & Stony Creek and have no outlet to the Pennsylvania or the Baltimore & Ohio except over the rails of the Johnstown & Stony Creek.

Clearfield district rates are not applied on coal shipped from mines on the Johnstown & Stony Creek when routed via the Pennsylvania Railroad, but it is stated of record that when routed via the Baltimore & Ohio the flat Meyersdale district rate is applied, and the Baltimore & Ohio absorbs the charges of the Johnstown & Stony Creek out of that rate. With respect to this latter statement it is shown by tariffs on file with the Commission that prior to October 20, 1916, the Baltimore & Ohio absorbed the charge of the Johnstown & Stony Creek of $6\frac{1}{2}$ cents per ton on coal originating on that line, but this absorption was not made applicable to coal shipped from the mines of the Valley Smokeless Coal Company which, as before stated, is shipped directly over the rails of the Baltimore & Ohio. By tariff effective October 20, 1916, the allowance on coal originating on the Johnstown & Stony Creek destined to points on or via the Baltimore & Ohio was canceled, and since that date no allowance has been made by the Baltimore & Ohio to the Johnstown & Stony Creek on outbound coal. The Baltimore & Ohio is not a party to this proceeding, and the order suspending the $6\frac{1}{2}$ -cent switching charge on outbound coal does not apply to shipments switched by the Johnstown & Stony Creek to the Baltimore & Ohio.

The Johnstown & Stony Creek is a common-carrier switching line that interchanges traffic with the Baltimore & Ohio and the Pennsylvania at Johnstown, as set forth in *Johnstown & Stony Creek R. R.*

Co. Case, 41 I. C. C., 46. Since the record in that proceeding was closed, there have been certain changes in the line of that road; these changes, however, are physical only and need not here be particularized, as the rights of the coal shippers served are not affected. In that report, however, on pages 51 and 52, we said:

Coal mines on the Baltimore & Ohio at Johnstown are in the Meyersdale district. The Baltimore & Ohio may therefore properly decline to apply its Johnstown locality rates to and from points on the Johnstown & Stony Creek, provided no unlawful discrimination is practiced. We observe in this connection that the Baltimore & Ohio maintains joint rates with the Pennsylvania between locations at Johnstown on the Pennsylvania and local and common points on its lines that are substantially higher than its rates between locations at Johnstown on its own rails and the same common and local points. Discrimination is alleged in that the Meyersdale district rates on coal apply from the tipples of the Valley Smokeless Coal Company when the Baltimore & Ohio handles the traffic directly, hauling it south over the coal company's track to the point where it connects with the Baltimore & Ohio's rails, whereas, if the traffic is handled north by the Johnstown & Stony Creek and then delivered to the Baltimore & Ohio, the Johnstown & Stony Creek's charge of \$1.50 per car is added to the Meyersdale district rate and is not absorbed. The very fact, however, that an independent terminal carrier participates in the traffic in one case and not in the other differentiates the two cases, especially as the direct service by the Baltimore & Ohio is available except occasionally in times of car shortage.

* * * * *

The evidence fails to establish that the Pennsylvania would unduly prejudice shippers on the Johnstown & Stony Creek by refusing to apply its Johnstown locality rates to and from points on the Johnstown & Stony Creek, and in the absence of discrimination such action would not be improper.

The record before us shows that the Pennsylvania now applies its Johnstown rates to industries located on the Johnstown & Stony Creek on all traffic inbound and outbound, with the exception of outbound shipments of coal and coke. It is also shown that the Clearfield district rate is applied to practically all mines within that district, whether located on the main lines of the Pennsylvania, on its branches, or on laterals having no other outlet than by way of the Pennsylvania. It is contended by the Pennsylvania that to extend the Clearfield group rates to coal mines on the Johnstown & Stony Creek would unduly prefer such mines, as some of them are now served directly by the Baltimore & Ohio, and all of them can find outlets over both trunk lines. Such double outlet at the flat district rates, it is claimed, would give these mines excessive car supply during times of shortage and enable them to market coal over wider areas of distribution than their competitors can reach. The answer to this contention is to be found in *In re Irregularities in Mine Ratings*, 25 I. C. C., 286, at page 298; the trunk lines may not be permitted to continue discriminatory practices upon the alleged fear

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that the correction would lead them into other violations of the law when the way to avoid such other irregularities has already been pointed out by the Commission.

Complainants attempted to show that the rates from mines on the Johnstown & Stony Creek to interstate destinations are unreasonable to the extent that they exceed the district rates, using the rates to Philadelphia, Pa., by the intrastate route of the Pennsylvania, as illustrative. The testimony introduced for this purpose, however, would serve more directly to indicate undue prejudice and disadvantage. The following table shows the distances to Philadelphia from Johnstown and from the most distant points on the main and branch lines of the Pennsylvania which take the Clearfield rate eastbound:

To Philadelphia ¹ from—	On—	Distance (miles).	Rate.
Johnstown.....	Main line.....	280	\$1.60
Latrobe.....	.....do.....	317	1.60
Cairnbrook.....	South Fork branch..	300	1.60
Tunnelton.....	Conemaugh branch..	316	1.60
Indiana.....	Indiana branch.....	324	1.60
Fordham.....	Fordham branch....	300	1.60
Anita.....	Elk Run branch.....	301	1.60
Grampian.....	Tyrone branch.....	280	1.60
Cherry Tree.....	Cresson branch.....	285	1.60

¹ Distances shown are those to West Philadelphia.

The rate of \$1.60 also applies to Camden, N. J., and to Baltimore, Md.

The following table shows the average distances to junction points with the main line of the Pennsylvania, average distances to Philadelphia and to South Amboy, N. J., and the through rates applicable from mines on short and lateral railroads connecting with the Pennsylvania:

From mines on the—	Distance to junction with main line of Pa. R. R.	Distance to Philadel- phia.	Rate to Philadel- phia.	Distance to South Ambr
	<i>Miles.</i>	<i>Miles.</i>		
Huntingdon & Broad Top Mountain R. R.....	30	237	\$1.60	
East Broad Top R. R.....	29	225	1.6	
Juniata & Southern R. R.....	19.5	226.5	1	
Kittanning Run R. R.....	4.6	251.6		
Glen White Coal & Lumber Co. R. R.....	2	249		
Cherry Tree & Dixonville R. R.....	25-29	310		
Ligonier Valley R. R.....	¹ 10	327		
Johnstown & Stony Creek R. R.....	2	252		

¹ In the Greensburg district.
² Proposed combination of \$1.00 plus 6½ cents. Rev
³ Revenue per ton-mile, 5.6 mills.

The Johnstown & Stony Creek at
ableness of its present and prop
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interstate transportation by a showing that its gross operating revenue is inadequate. The respondent, however, has not segregated the cost of the coal traffic from other traffic, and we are not satisfied with the attempt made to apportion the cost of the intraplant movement at the Lorain Steel Works in accordance with the principles announced in the *Chicago, West Pullman & Southern R. R. Co. Case*, 37 I. C. C., 408. The test made was a check of the actual number of hours the engines were engaged in purely intraplant service for a period of one week only. The result was applied to the intraplant business for a year. The yearly cost so computed was deducted from the total cost of operations, and the balance assumed to be the cost of the interchange movement. The test covered too short a period to afford an accurate basis for computing the costs of intraplant and interchange business. The result of the test is not entitled to weighty consideration.

In so far as the proposed increased rates are a part of the combination through rates on coal to eastern destinations, we find that the proposed rates have not been justified. In view of our findings and order in connection with No. 8956, an order will be entered discontinuing this proceeding. This action is without prejudice, however, to respondent's right to readjust its divisions or proportional switching charges after the findings and orders in connection with No. 8956 have been complied with. In condemning the 6.5-cent rate proposed by the Johnstown & Stony Creek on outbound coal and coke we have in mind that the Commission is interested in the maximum rather than the minimum earnings of industrial roads, and it is our duty to see that their earnings as a whole and on particular descriptions of traffic do not exceed a fair return for the services performed.

We find that the mines of complainants are located within the Clearfield rate district; that it is a practice of defendant Pennsylvania Railroad Company to extend its Clearfield district rates on coal to eastern destinations from points on connecting lateral lines and from points on connecting industrial railroads by means of absorption, or of divisions to such as are common carriers, or by means of allowances to owners of property transported, when the outlet to eastern markets is solely by way of its line. We further find that defendants by refusing to extend the Clearfield district rates on outbound coal from the mines of complainants located on the Johnstown & Stony Creek, while extending the district rates to other mines generally throughout the Clearfield district, give undue preference and advantage to complainants' competitors engaged in mining and selling coal in the same territory and subject complainants to undue prejudice and disadvantage. An order will

be entered requiring defendants to publish and maintain for the transportation of bituminous coal from mines located upon the Johnstown & Stony Creek Railroad to eastern interstate destinations rates which shall not exceed the rates contemporaneously maintained and applied by defendant Pennsylvania Railroad Company for the transportation of bituminous coal from points within the Clearfield rate district to eastern interstate destinations.

Reparation is asked upon all shipments of coal moving from complainants' mines to various eastbound interstate destinations during the two years prior to filing the complaint and since that time. Complainants are in open and acute competition with other coal mines throughout the Clearfield district. The character of the coal produced by complainants is the same as that produced throughout the region and is used for the same purposes. In order to meet this competition complainants were and are forced to sell their coal at the same market prices as their competitors sell and to absorb the local charges of the Johnstown & Stony Creek out of their profits. We find that complainants made the shipments as described in the statements filed as exhibits; that they have paid and borne the charges thereon at the rates herein found unduly prejudicial and disadvantageous; that they have been damaged to the extent that the charges paid exceeded the charges that would have accrued at the Clearfield district rate; and that they are entitled to reparation, with interest. The exact amount of reparation can not be determined on this record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to the defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

Appropriate orders will be entered.

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No. 8542.¹
R. H. GREEN ET AL.
v.
ALABAMA & VICKSBURG RAILWAY COMPANY.

Submitted July 10, 1916. Decided April 9, 1917.

1. Rate of 8 cents per 100 pounds on coarse grain and grain products from Vicksburg, Miss., when originating at St. Louis, Mo., to Jackson, Miss., justified.
2. Reshipping rate of 20 cents per 100 pounds on coarse grain and grain products from St. Louis, Mo., to Jackson and Meridian, Miss., justified.
3. Authority to continue rates on grain and grain products from Vicksburg to Mobile, Ala., lower than the rates contemporaneously applicable on like traffic to Jackson and points intermediate thereto, denied.

George Butler and *W. D. Hannah* for complainants.

S. H. Witherspoon and *James E. Redus* for Meridian Board of Trade.

W. R. Smith Vanez for R. H. Green and Jackson Board of Trade.

M. P. Callaway and *R. Walton Moore* for defendants.

W. O. Bartholomew and *J. G. Vahle* for Southern Illinois Millers' Association; Bernet, Craft and Kauffman Milling Company; and Hezel Milling Company, interveners.

Louis A. Valier for Valier & Spies Milling Company, intervener.

C. B. Stafford for Memphis Merchants Exchange, intervener.

J. M. Wood, *Charles Heuck*, and *W. D. Davis* for Brookhaven Board of Trade, intervener.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

These cases are closely related, were heard together, and will be disposed of in one report. The complaint in No. 8542 was filed December 23, 1915, by R. H. Green, the Hannah Distributing Company, wholesale dealers in grain and grain products, and the Royal Feed & Milling Company, engaged in the manufacture and sale of mixed feed, all of Jackson, Miss. The Alabama & Vicksburg Railway Company, hereinafter referred to as the Alabama & Vicksburg, is the sole defendant. The complaint in No. 8542 (Sub-No. 1) was filed January 13, 1916, by the boards of trade of Jackson and

¹ This proceeding also embraces complaint in No. 8542 (Sub-No. 1), Jackson Board of Trade et al. v. Illinois Central Railroad Company et al., and portion of Alabama & Vicksburg Railway's Fourth Section Application No. 601.

Meridian, Miss., against the Alabama & Vicksburg, the Illinois Central Railroad Company, hereinafter referred to as the Illinois Central, and the Mobile & Ohio Railroad Company, hereinafter referred to as the Mobile & Ohio. These cases will hereinafter be referred to respectively as the first and second proceedings. Rates are stated in cents per 100 pounds.

In the first proceeding it is alleged that the proportional rate of 8 cents on coarse grain and grain products from Vicksburg, Miss., to Jackson is unreasonable and that with a rate of 12 cents from St. Louis, Mo., to Vicksburg participated in by defendant it results in a combination rate of 20 cents, which gives unreasonable preference and advantage to complainants' competitors located at Vicksburg, and to Vicksburg and surrounding territory, and is unduly prejudicial and disadvantageous to complainants.

In the second proceeding it is alleged that the reshipping rate of 20 cents on coarse grain and grain products maintained by defendants from St. Louis, Mo., to Jackson and Meridian is unreasonable, and that it discriminates unjustly in favor of Vicksburg and Gulfport, Miss., Mobile, Ala., and Slidell and New Orleans, La., to the disadvantage of complainants and grain dealers located at Jackson and Meridian. Rates of 2.5 cents from Vicksburg to Jackson and 14.5 cents from St. Louis to Jackson and Meridian are asked.

In the second proceeding only the rate from St. Louis is attacked, but the record indicates that that point is taken as representative, there being relationships between the rates from St. Louis and from Cairo, Ill., Memphis, Tenn., Omaha, Nebr., and certain other points to Mississippi Valley territory, and that any change in the St. Louis rate would necessarily involve changes in rates from those points.

The Memphis Merchants' Exchange intervened in the first proceeding and asks that the present relationship of rates under which Memphis has a 6-cent differential under St. Louis be preserved. The Southern Illinois Millers' Association and a number of other milling concerns having mills at St. Louis and at East St. Louis and other points in southern Illinois, intervened in the second proceeding, alleging discrimination by reason of there being no reshipping rates applicable to the transportation of wheat and flour from St. Louis to Jackson. They ask, generally, that whatever rate is approved by the Commission in these proceedings from St. Louis to Jackson be established on wheat and flour. Specifically they ask for a rate of 15 cents, based on the rate of 12 cents to Vicksburg plus an intrastate rate of 3 cents applicable on flour from Vicksburg to Jackson. The Board of Trade of Brookhaven, Miss., intervened in both proceedings for the purpose of securing a continuance of the present adjustment as between Brookhaven on the one hand and Jackson and

Meridian on the other, and asks that if any reduction be made in the rates to these points a corresponding reduction be made in the rates to Brookhaven.

That portion of Alabama & Vicksburg Railway Company's Fourth Section Application No. 601, by which authority is sought to continue rates on grain and grain products from Vicksburg to Laurel and Hattiesburg, Miss., and to Mobile lower than the rates contemporaneously applicable on like traffic to Jackson and other intermediate points was set for hearing with the complaints.

The defendants renew in their brief an objection urged at the hearing that the matters involved in the intervening petition of the Southern Illinois Millers' Association and certain other milling interests are entirely beyond and seek to enlarge the scope of the complaint in the original proceeding inasmuch as the rates on wheat and flour are not attacked in either of the complaints. The rates on wheat and flour are sometimes the same as those on coarse grain and grain products, but it can not be said that they must necessarily be the same. We think that defendants' position is well taken. *Rates on Grain and Grain Products*, 33 I. C. C., 613; *Moore & Thompson Paper Co. v. B. & M. R. R.*, 34 I. C. C., 323; and *Jennison Co. v. Great Northern Ry. Co.*, 18 I. C. C., 113.

The rates in issue were increased subsequently to January 1, 1910, and the burden of justifying them is upon defendants.

Jackson is the capital of the state of Mississippi and Meridian is said to be the metropolis of the state. Both points are manufacturing centers, and complainants contend that the conditions thereat, geographically and otherwise, are unique and different from conditions at any other place in the United States. They assert that grain and grain products represent by far the largest items of tonnage into Jackson and Meridian; that the present adjustment will divert this business to other points, drive grain and grain products' dealers out of business and result in large losses to dealers who have warehouses and equipment for handling such business.

The Alabama & Vicksburg extends almost due east from Vicksburg through Jackson to Meridian. The distances to Jackson and to Meridian are 44 miles and 140 miles, respectively. The Illinois Central runs in a southerly direction from St. Louis through Jackson to New Orleans. The Mobile & Ohio runs in a southerly direction from St. Louis through Meridian to Mobile. These are the direct routes from St. Louis to Jackson and Meridian, and via these routes the distances are, respectively, 518 miles to Jackson and 513 miles to Meridian. The distances from Jackson and Meridian to New Orleans and Mobile, via these lines, are 183 and 135 miles, respectively. The New Orleans Great Northern and the New Orleans

& Northeastern railways extend from New Orleans, the former to Jackson, and the latter to Meridian. Slidell is located at a junction of these two lines, 29 miles from New Orleans. The Gulf & Ship Island Railroad extends from Jackson to Gulfport, Miss., on the Gulf of Mexico.

The Alabama & Vicksburg, or, as it was then known, the Meridian & Vicksburg Railroad, was completed to Jackson about the year 1841 and to Meridian about 1860, and as there were at that time no direct lines from the Ohio River to Jackson or Meridian, the natural route from the grain fields to these points was via boat from the upper Mississippi and Ohio rivers to Vicksburg, and thence over the Alabama & Vicksburg. This movement, it appears, was under joint water-and-rail rates. Later the Illinois Central and the Mobile & Ohio were extended from the Ohio River to Jackson and Meridian, respectively. Defendant represents that intense competition then ensued between the direct rail routes and the Vicksburg water-and-rail route, and likewise between the rival rail lines; that due to this competition the all-rail rates from St. Louis to Jackson and Meridian were at times as low as the water rates to Vicksburg, which latter rates were also depressed by competition of different boat lines; and that the divisions accruing to the Alabama & Vicksburg out of the joint rates with the boat lines were at times reduced to 2.5 cents to Jackson and 3.5 cents to Meridian. It appears that the rates from Vicksburg to these points later became the same as the then divisions of the joint rates with the boat lines. They are represented as having become fastened upon the Alabama & Vicksburg.

The very early history of these rates is not fully established. We gather, however, from the somewhat conflicting evidence as to their history and from the tariffs on file, the following facts, some of which are referred to in *Commercial Club of Hattiesburg v. A. G. S. R. R. Co.*, 16 I. C. C., 534, and other previous cases before us: Immediately prior to September 22, 1889, rates on grain of 5 cents to Jackson and 10 cents to Meridian were maintained. On that date the rates were materially increased, whereupon complaints were filed with the Mississippi Railroad Commission by the boards of trade of Jackson and Meridian. That commission, on October 22, 1889, ordered rates on grain to these points of 10 cents. What the rates were between that date and March 12, 1900, does not appear, but effective on the last-named date rates of 2.5 cents to Jackson and 3.5 cents to Meridian were established, applying as rebilling rates on shipments moving to Vicksburg via the Alabama & Vicksburg and the Vicksburg, Shreveport & Pacific Railway. Defendant asserts that in 1890 the state commission ordered the establishment of these rates, but this statement is not substantiated on the record. Ef-

fective December 12, 1901, the rates were again increased to 5 cents to Jackson and Meridian. Another complaint was filed with the state commission, and, by order effective July 3, 1902, it required the establishment of flat rates on grain and grain products of 3 cents to Jackson and 3.5 cents to Meridian. That order was suspended on request of defendant, and later was canceled upon defendant's agreeing to publish those rates as rebilling rates. Effective July 23, 1902, proportional rates of 2.5 cents to Jackson and 3.5 cents to Meridian, restricted to the movement of shipments reaching Vicksburg via the Vicksburg, Shreveport & Pacific Railway, which line was under the same management as that of defendant, were established. The Meridian interests then filed a further proceeding before the Mississippi commission, complaining of discrimination in favor of Vicksburg and seeking to have the rate to Meridian made applicable as a flat rate, and by order of that commission of November 16, 1903, the petition was granted. The validity of this order was sustained by the supreme court of Mississippi and later by the Supreme Court of the United States. *Alabama & Vicksburg Ry. Co. v. Mississippi Railroad Commission*, 203 U. S., 496. The order of the Mississippi commission stood enjoined until the decision was rendered by the Supreme Court of the United States. The rate of 3.5 cents to Meridian was thereupon published, effective December 17, 1906, as a flat rate applicable on intrastate traffic, and was in force at the date of the hearing. The proportional rate of 2.5 cents to Jackson was first filed with this Commission effective February 27, 1907, and remained in force until April 25, 1915, when it was canceled, leaving in effect, applicable to interstate shipments, a proportional rate of 8 cents. For a number of years defendant maintained flat interstate and intrastate rates of 8 cents and 10 cents from Vicksburg to Jackson and Meridian, respectively. On November 22, 1915, the intrastate rate to Jackson was reduced to 3 cents by order of the Mississippi commission. The interstate rate of 10 cents to Meridian was reduced to 8 cents, effective January 1, 1916, and on the same date the proportional rate of 8 cents to Jackson was canceled. It will thus be noted that when the complaint was filed a proportional rate of 8 cents was in force, and that while the same rate is now in force, it is published as a local rate.

Complainants contend that all the rates from Vicksburg to Jackson were voluntary rates, but they particularly insist that the rates in effect prior to September 22, 1889, and those established March 12, 1900, and July 23, 1902, were not required by order of the state commission, but were established by voluntary acts of the defendant. They urge that the rates ordered by the Mississippi commission in 1889 were in excess of the rate formerly maintained, and point out

that the rate of 2.5 cents established to Jackson and maintained until 1915 was one-half cent less than the rate required by the state commission in 1902. They urge that the rate of 2.5 cents formerly in force was a part of a through rate and that it should not therefore have been increased. This is also reflected in their statement that the rate should only be "a reasonable differential over Vicksburg," and as supporting this contention reference is made to *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 154. The rates there involved were made by adding to the joint rates to Atlanta certain differentials. We found that in making rates on long-distance traffic to the points in question the differentials or arbitraries beyond the basing point were too high. The question whether or not, because it is a portion of a through rate, the rate here in question should be lower than a reasonable local rate from Vicksburg appears to be the key to this complaint and to the rates over the direct lines from St. Louis to Jackson and Meridian.

In determining the reasonableness of a portion of a through rate many facts in connection with the through rate of which it is a part must be considered. The shipper is ordinarily concerned only with the through charges. *Interior Iowa Cities Case*, 28 I. C. C., 64. The rate from Vicksburg to Meridian is not at issue in this proceeding, but, as stated in *Commercial Club of Hattiesburg v. A. G. S. R. R. Co.*, *supra*, and as shown by the present record, there is a relationship of rates as between Jackson and Meridian. Meridian has insisted upon preserving this relationship and is here uniting with Jackson in asking for the same rate by the direct lines from St. Louis. In considering the question of a proper rate from Vicksburg to Jackson to be applied in connection with the rate on these commodities from St. Louis to Vicksburg, we may not therefore be unmindful of the fact that the rate from Vicksburg to Meridian can not well be materially higher than that to Jackson and that the combination rates to these points are now depressed by reason of the low factor to Vicksburg.

Complainants point to the commercial interests of Jackson and Meridian and their importance as distributing centers; also to the proximity of these points to the low-rated points in Mississippi Valley territory and the past adjustment of rates to these various points.

They contend that the defendant's intrastate distance scale of rates applicable on grain and grain products, any quantity, for a distance of 44 miles is only 8 cents. They refer to rates of 6 cents participated in by defendant from Vicksburg to Mobile, 7 cents Vicksburg to Hattiesburg and Laurel, and 6 cents from Memphis to Vicksburg, and also to rates of 6 cents applicable over the

lines of other carriers from Memphis to Natchez, Slidell, New Orleans, Gulfport, Greenville, and Mobile. The short-line distance over which certain of the 6-cent rates are applicable is approximately 400 miles, but complainants point to the much longer routes over which some of these rates applied, that of the Mobile & Ohio and the Southern Railway through Corinth from Memphis to Mobile, for example, being approximately 500 miles. Each of the rates from the low-rated points referred to are parts of through rates, and the principle invoked by complainants would apply equally in connection with the rates over each of those routes and would result in a change in the whole Mississippi Valley adjustment.

The defendant contends—

(1) That the rates formerly maintained from Vicksburg of 2.5 cents to Jackson and 3.5 cents to Meridian were abnormally low and unremunerative and at no time established by its voluntary action but always under the direct order of or threatened order of the Mississippi commission;

(2) That if it were true that the rates from Vicksburg to Jackson and Meridian had been voluntarily established, it has continuously and repeatedly endeavored to escape from and to increase them, and that there is no warrant for their continued enforcement;

(3) That the present rates are reasonable both in and of themselves and as compared with other rates in this and other territory and do not subject Jackson and Meridian to unjust discrimination.

It states that the divisions of 2.5 cents to Jackson and 3.5 cents to Meridian, accruing out of the through rates, were the minimum divisions which it at any time accepted on such traffic and were agreed to only with the view of keeping the route open. It contends that the rate established to Jackson in 1902 was made 2.5 cents and not 3 cents, because it was notified by the state commission that unless the former rates were restored the establishment of a flat rate to Meridian of 3.5 cents would be required, whereupon it agreed to establish and did establish a proportional rate from Vicksburg to these points equal to the difference between the rate from St. Louis to Vicksburg and the rate from St. Louis to Jackson and Meridian. It represents that the 2.5-cent rate was continued to Jackson, because it was clear from the litigation concerning the rate to Meridian that it would not be permitted to increase that rate, and to further substantiate this view it refers to the reduction of the rate to 3 cents by the state commission in 1915, following the cancellation of the rebilling rate of 2.5 cents. It points out that only the discriminatory feature of the former rate to Meridian was before the supreme court of the state of Mississippi and the Supreme Court of the United States, and that

the discrimination there found does not exist under the present rates.

Defendant says that the 8-cent intrastate rate was originally established under a compromise with the Mississippi commission, which is stated to have approved that rate for distances not exceeding 50 miles, and was made applicable to both carload and less-than-carload shipments at the request of that commission. This rate has remained in effect from Meridian, Jackson, and Vicksburg to points on the line of defendant within 50 miles of those respective points, except that it was reduced, as has been stated, during the year 1915 to 3 cents to Jackson by order of the Mississippi commission and in 1906 to 3.5 cents to Meridian following the decision of the Supreme Court of the United States.

Defendant shows that the average loading of these commodities handled by it from and through Vicksburg to Jackson is approximately 35,000 pounds per car, and that a rate of 2.5 cents represents a per car revenue for the haul of \$8.75, including terminal expenses at both Vicksburg and Jackson; and the rate of 8 cents, a per car revenue of \$28.

With respect to the rates from Memphis noted, we are referred to *Memphis Grain & Hay Assn. v. St. L. & S. F. R. R. Co.*, 24 I. C. C., 609, in which proceeding we found that Memphis was at a disadvantage as compared with St. Louis and other markets having reshipping rates to Mississippi Valley points, and required that discrimination removed. Each of the rates from Memphis referred to is to a water competitive point, to which the rate from St. Louis is 12 cents, and it is stated that they were established, at least by certain of the lines, as a result of our finding in that proceeding. Admittedly all such rates are depressed rates and may not be made the "exact measure" of the rate from Vicksburg to Jackson. The contention, in reality, is that if those rates are remunerative the rate under attack is too high. Defendant does not participate in the rate from Memphis to Mobile, and after that reshipping rate was put into effect it established as a competitive measure a similar rate from Vicksburg to Mobile, as there is considerable movement of Texas oats through the various Mississippi River crossings, the rate on which is 20 cents to both Vicksburg and Memphis. The rate of 7 cents from Vicksburg to Hattiesburg and Laurel was established under an order of the Mississippi commission directed against defendant and the New Orleans & Northeastern Railroad, and when it was established the lines from Gulfport, Mobile, New Orleans, Vicksburg, and Natchez, in order to participate in the traffic, established the same rate from those points to Hattiesburg and Laurel. Defendant has shown the rates from substantially all of the low-

rated points mentioned to interior points on the lines of numerous carriers, also between a great number of other points in this territory, for varying distances, and particularly for distances similar to those from Vicksburg to Jackson and to Meridian. Attention is called to the fact that many of these rates are to commercial centers and some to points equal in commercial importance to Jackson.

Complainants insist that the rates referred to are not a fair measure of the rate from Vicksburg to Jackson, and, while this view is predicated chiefly upon the general contentions hereinbefore referred to, attention is also directed to the fact that defendant is one of the oldest railroads in the state, with a financial condition much more favorable than that of lines over which many of the rates referred to are applicable. Numerous rates referred to by defendant are not fairly comparable with the rate under consideration, but, with due regard to the circumstances and conditions affecting these various rates, it can not be said that the rate in question compares unfavorably with the general basis of rates between points in Mississippi Valley territory. The rate to Jackson does not appear to be materially higher, distance considered, than many rates shown in New England and central freight association territories, nor as high as the scale of rates prescribed intrastate in Texas, except a lower scale there on corn, oats, kafir corn, and milo maize. It is not materially higher for the distance than the scale of intrastate rates prescribed in Mississippi on native grown corn and oats, of 6 cents for 44 miles and 9 cents for 140 miles. The rate under this scale for 5 miles or under is 4 cents.

In support of the allegation that the rates attacked in the second proceeding are unreasonable complainants rely upon the disparity between the rates from St. Louis to Jackson and Meridian on the one hand and to the various low-rated points named in the Mississippi Valley territory on the other hand, pointing out that the distances via certain of the routes over which the 12-cent rates apply approximate 700 miles, the movement being through Jackson or Meridian. Defendants state that the rates under consideration are lower than they would otherwise be except for the depressed rate to Vicksburg. In the southern classification these commodities are rated class D, any quantity, which is a departure from the usual class basis, being in substance an exception to the normal class. The class D rates, which would apply in this territory except for conditions due to water competition, from St. Louis to Vicksburg are 20 cents, and to Jackson and Meridian 31 cents. Defendants show that, with the exception of a few points to which the rates are slightly reduced by reason of a lower combination prevailing, the reshipping rates

of 20 cents are carried to points on the Illinois Central north of Jackson, to and including Michigan City, 205 miles from Jackson, and that to a number of points still farther north, to which no reshipping rates are published, the "going" rate is 20 cents; also that the reshipping rates of 20 cents are carried to points on the Mobile & Ohio, north of Meridian, to and including Pinson, Miss., 239 miles from Meridian. They show the rates from St. Louis to points generally in Mississippi Valley territory and numerous representative points east of that territory.

For instance, the rates and short-line distances from St. Louis are: To Birmingham, Ala., 25 cents, 475 miles; to Chattanooga, Tenn., 23 cents, 471 miles; to Tuscaloosa, Ala., 28 cents, 504 miles; to Montgomery, Ala., 25 cents, 572 miles. The rate to Montgomery, it is stated, is held down by the Mobile combination and water competition. These rates are generally 1 cent higher than those approved by us in *Morgan Grain Co. v. A. C. L. R. R. Co.*, 19 I. C. C., 460. Many of the rates referred to are not reshipping rates. Some of them are any-quantity rates and many of them, particularly the rates to southeastern territory, from crossings other than St. Louis are class D rates; though most of them are the actual "going rates." While some of these rates are not fairly comparable with those under consideration it clearly appears that the rates assailed are upon a lower basis than any of the other rates excepting those from St. Louis and related points to Mississippi Valley territory, and that they compare favorably with the rates to all points in that territory except those to points at which the rates are depressed by water competition, or to points at which the rates are held down by combination on such water competitive points. We stated in *Rates on Grain and Grain Products, supra*, that the reverse of this situation was formerly the case, and that from St. Louis the rates then in effect to Jackson and Meridian were lower than for hauls of equal or less distance to points generally in that territory. Complainants point to the inferior commercial importance of these other points, such as points north of Jackson and Meridian on defendants' lines which take the 20-cent rate and say that they desire rates which will enable Jackson and Meridian to job in competition with the water competitive points.

Prior to changes made in accordance with our fourth section orders, hereinafter referred to, defendants' rates on these commodities from St. Louis and related points to Jackson and Meridian, also their rates for interstate application from Vicksburg to these points, were lower than those to intermediate points, these adjustments being protected by fourth section applications on file. It may be here noted that the rates prescribed by the Mississippi commission were not

applied as maxima at intermediate points, and higher intrastate rates to such points were and are now maintained. In *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, authority for the direct lines to continue lower class and commodity rates from St. Louis to Jackson and Meridian than to intermediate points was denied. In *Rates on Grain and Grain Products*, *supra*, we considered the application of the Alabama & Vicksburg for authority to maintain rates from Vicksburg to Jackson and Meridian lower than to intermediate points, also applications by which authority was sought to maintain rates from Omaha to Jackson lower than to intermediate points. We likewise gave further consideration to the carriers' applications by which authority was sought to maintain rates from St. Louis, Ohio River crossings, and other related points to Jackson and Meridian lower than to intermediate stations. We there found that no conditions were shown to exist at Jackson or Meridian which warranted the maintenance of interstate rates from Vicksburg to those points which were lower than rates on like traffic to intermediate points. The direct lines were authorized to continue rates to Jackson and Meridian not higher than the aggregates of the intermediate rates to and from Vicksburg contemporaneously maintained and to maintain higher rates to intermediate points, provided the rates to such intermediate points conformed to requirements specified in the order. The direct lines, however, did not avail themselves of that permission, but instead increased the rates to Jackson and to Meridian to 20 cents, at the same time adjusting their rates to intermediate points to conform to the rule of the fourth section. Shortly before that decision was rendered the 2.5-cent re-shipping rate from Vicksburg to Jackson was canceled, leaving in effect, for interstate application, the 8-cent rate.

Complainants have filed an extract from the transcript of the record in the proceedings just referred to and direct particular attention to the testimony there offered by the carriers wherein they referred to the peculiar conditions existing at Jackson and Meridian and proposed to cancel the 2.5-cent rate to Jackson and to establish interstate factors applicable from Vicksburg to Jackson and Meridian of 3.5 cents and to increase the rates via the direct lines from St. Louis to these points from 14.5 cents to 15.5 cents. Defendants offer the following in explanation of that testimony and in justification of the course pursued:

(a) That as the law was then understood, shippers were able to bill their traffic to Vicksburg, pay the freight charges to that point and thus take constructive possession of the car and ship out to other points under a new bill of lading at the intrastate rate, and during such period the carriers knew of no way in which interstate rates

from Vicksburg to these destinations, higher than the existing intrastate rates, could be maintained and not be defeated in the making of through rates;

(b) That it had been the settled policy of the Mobile & Ohio and Illinois Central to make rates from St. Louis the same to Jackson and Meridian; that this policy had been observed in making the rates to these points from all the Ohio and Mississippi river gateways from which the rates are made with relation to the rates from St. Louis; and that they were forced to make the rates via the direct lines to Jackson and Meridian no higher than the depressed rate to Vicksburg plus the intrastate rate beyond or withdraw from the traffic;

(c) That the Alabama & Vicksburg handles considerable traffic to points intermediate to Jackson and Meridian, and as the fourth section orders referred to did not permit the maintenance of rates to such points higher than to Jackson or Meridian, this carrier could not continue the basis formerly in effect to the last-named points, as they considered that a reduction of the rates to the intermediate points would result in a reduction in the rates out of many other points, and thereby lower the whole scale of rates on these commodities in Mississippi Valley territory. Furthermore, that as those orders did not permit the maintenance of rates by the direct lines to points north of the southern boundary of the state of Tennessee, higher than to Jackson and Meridian, the continuance of the low basis formerly in effect to Jackson and Meridian would have forced reductions via the direct lines and also over routes not exceeding by 15 per cent the distance via the direct routes to substantially all points between the state boundary line mentioned and Jackson and Meridian. These reductions via the direct lines it is stated would have been in varying amounts up to 4.5 cents on the Illinois Central and 6.5 cents on the Mobile & Ohio, and would have seriously impaired the revenues of those carriers. The points of origin affected by these orders were St. Louis, Ohio River crossings, and related points, and it was feared that serious reductions would also result in the rates to points intermediate to Jackson and Meridian on routes from Louisville, Ky., Cincinnati, Ohio, etc., including such important intermediate points as Chattanooga, Tenn., Birmingham, Ala., Tuscaloosa, Ala., etc.

Defendants refer in this connection to *Kanotex Refining Co. v. A., T. & S. F. Ry. Co.*, 34 L. C. C., 271, decided June 8, 1915, or shortly after the date of the Commission's report in *Rates on Grain and Grain Products*, *supra*. In this case the Commission held that on any through carriage of traffic between interstate points the lawfully published interstate rate must be applied by the carrier and

paid by the shipper, and that where the through interstate rate in effect between two points is higher than the aggregate of the intermediate rates any plan of first billing to an intermediate point a shipment that is really intended to reach a destination beyond is simply a device for defeating the lawful through rate, and is unlawful. The Alabama & Vicksburg avers that this decision gave it, for the first time, an opportunity to establish a reasonable and remunerative rate from Vicksburg to Jackson and Meridian. It should be noted, however, that the rate of 2.5 cents was canceled prior to that decision.

Though only an element to be considered, and in no way conclusive, the history of rates involved in a proceeding before us sometimes has a material bearing upon the question of what rates should properly apply. This is particularly true if the former rates are shown to have been voluntarily maintained. We have set out in some detail the history of the rates because of the importance attached thereto by complainants. However, the question whether in a technical sense these various rates were or were not voluntarily maintained is immaterial to a disposition of these proceedings. The defendant in No. 8542 has not shown any reasons other than competition which induced the establishment of the rates in 1900. But it clearly appears that, at least since they were increased in 1901, the rates from Vicksburg to both Jackson and Meridian were not voluntary in such a sense as to be controlling here. *Morgan Grain Co. v. A. C. L. R. R. Co.*, *supra*, and *Atlanta Freight Bureau v. N., C. & St. L. Ry.*, 29 I. C. C., 476. It may also be said that many circumstances and conditions affecting these rates in past years were materially dissimilar to those affecting the present rates. The issues presented must therefore be determined, at least to a great extent, in the light of present conditions.

From July, 1907, to January 1, 1916, the reshipping rates of the Illinois Central and the Mobile & Ohio from St. Louis to Jackson and Meridian were 14.5 cents. On the latter date they were increased to 20 cents. At times between 1902 and 1907 these rates were lower than 14.5 cents. The rates also apply and have applied via the Illinois Central and the Alabama & Vicksburg through Jackson to Meridian, and via the Mobile & Ohio and the Alabama & Vicksburg through Meridian to Jackson.

The rates from St. Louis to Jackson and Meridian by the direct lines are, and for many years past have been, the same or substantially the same as the Vicksburg combination, and under the fourth section orders referred to a strict observance of the rule of the fourth section was required unless such rates were made on that combination. The record shows that there is little movement of grain and grain products

from St. Louis to Jackson and Meridian except via the direct lines, and defendants urgently insist that the only object of the first proceeding is to force a reduction in the rates via those lines. There are statements in connection with the evidence offered by the Meridian Board of Trade which tend to support defendants' views in this respect. This purpose is denied by the complainants in the first proceeding, who assert that the rate from Vicksburg is important to apply on grain and grain products from points in St. Louis and Omaha territories, from which no through rates are published and are necessary to permit Jackson to draw oats, milo maize, and kafir corn from Texas and other points in the southwest from which no joint rates to Jackson are maintained. It is repeatedly stated in complainants' evidence that the purpose of the first proceeding is to procure the establishment of a 2.5-cent proportional rate that will apply on all shipments reaching Vicksburg from west of the river. The scope of the complaint can not, however, be broadened by these considerations. As this rate, however, has been an important consideration in fixing the through rate by the direct lines to Jackson and as defendant's objections in this particular are chiefly directed to a consideration of the rate as a factor of the through rate from points other than St. Louis, we shall regard the complaint as presenting an attack upon the rate from Vicksburg to Jackson in connection with the combination rate from St. Louis to Jackson.

The matter of alleged discrimination remains to be considered, and a discussion of this question with reference to the second proceeding will be sufficient, as the same character of discrimination against Jackson is there alleged as in the first proceeding. With certain minor exceptions, unnecessary to mention, the rates outbound from Jackson and Meridian, admittedly are upon as favorable a basis as the outbound rates from the points referred to. The discrimination complained of also grows out of the present relation of the rates from St. Louis to Jackson and Meridian and the rates from St. Louis to the water competitive points named. Complainants have graphically shown the territory in which they could formerly sell on equal terms with these competitive points and also the relatively restricted territory in which they may now sell on such terms. In numerous exhibits they have shown the aggregate of charges to the Jackson and Meridian dealers as compared with the aggregate of charges to dealers at such competitive points, these being computed at the carload rates to these respective points and the less-than-carload rates to the various points of consumption. Necessarily, with outbound rates from different points upon the same basis, a difference in the inbound rates to the distributing point will be reflected in the aggregate of charges to the point of ultimate destination, and necessarily such a

percentage of increase as has been made in the rates from St. Louis to Jackson and Meridian will materially affect the trade territory of these points. For this reason and because we may not measure the reasonableness of rates by the commercial necessities of the shipper it is unnecessary to go into detail regarding complainants' evidence on this subject.

The rates from St. Louis to many of the water competitive points mentioned have been considered in numerous of our decisions, including *Fourth Section Violations in the Southeast, supra*. Fourth section relief has been granted with respect to the rates to each of the competitive points referred to in the complaint except Slidell. This point, though not specifically considered in the case just referred to, has water competition through Lake Pontchartrain, and for many years has taken the New Orleans basis of rates from all points of origin here involved. As stated, complainants do not question the propriety of the rate basis to the low-rated points. It is admitted by their chief witness that the Illinois Central and the Mobile & Ohio have necessarily made low rates to the water competitive points named, and if the existing rates to those points were canceled by the east side lines it would not prevent dealers at such points from obtaining their grain and grain products at the present rates by barge on the Mississippi River or by the west side lines. Under these circumstances it can not be said that defendants' rates to these points subject Jackson and Meridian or complainants to undue prejudice unless defendants' rates to Jackson and Meridian are too high, and that matter we have considered.

Complainants refer to an intrastate rate of the Gulf & Ship Island Railroad of 5 cents from Gulfport to Jackson in effect when the complaint was filed applicable to traffic destined beyond Jackson. They undertake to show at great length how the 5-cent rate referred to enables the Gulfport dealer to undersell the Jackson dealer even at points north of Jackson on the Illinois Central. This rate, however, when applicable in connection with a movement beyond Jackson, was only a factor in a combination rate made on Jackson, the Illinois Central separately publishing its local rates beyond Jackson. No complaint is made as to the local rates of the Illinois Central. The Gulf & Ship Island Railroad is not a defendant herein. Furthermore, it appears that there has been no movement under these rates and that they are not now in effect.

With respect generally to these complaints it may be said that while much evidence has been directed to the disparity between the rates assailed and the other rates referred to, it is clear that the contention for a more favorable relationship or adjustment is based upon the history of these rates and the prior adjustment. Com-

plainants say that they "do not know what effect the relief asked would have on the rates to other points, but whatever the effect may be is no concern to Jackson and Meridian or to the consuming public in these territories." Defendants assert with much emphasis that the low rates formerly in effect to Jackson and Meridian were a constant source of complaint by other cities in this and contiguous territory, and refer to *Monroe Progressive League v. St. L., I. M. & S. Ry. Co.*, 15 I. C. C., 534, and *Commercial Club of Hattiesburg v. A. G. S. R. R. Co.*, *supra*, in which cases the cities of Monroe and Hattiesburg, respectively, also demanded lower rates because of their proximity to the Mississippi River, and that their rates from St. Louis be no higher than those to Jackson and Meridian. They also refer to the pending proceeding of *Tuscaloosa Board of Trade v. A. G. S. R. R. Co.*, Docket No. 8873, in which Tuscaloosa interests, showing that this point is only 119 miles northeast of Meridian, have made similar demands. They also point to the petition of shippers to the Mississippi commission in 1902 that the rate of 7 cents previously referred to be established from Vicksburg to Hattiesburg, which was based in part upon the existence of the low rates from Vicksburg to Jackson, and to the annual reports of the Mississippi commission for the years 1905 and 1907, setting forth the order of that commission prescribing a 4.5-cent rate from Vicksburg to Hattiesburg, which recites that "the Alabama & Vicksburg Railway Company, under the control of the Queen & Crescent system, is now and has been for several years charging and receiving a rate from Vicksburg to Jackson of 2.5 cents on grain and grain products in carload lots, and for the haul Vicksburg to Meridian 3.5 cents on the same." The enforcement of this order, it is stated, was enjoined by judicial proceedings.

The basing-point system of rates, so generally employed by carriers in the territory south of the Ohio and Potomac and east of the Mississippi rivers, under which rates to the basing points, generally commercial centers, were lower than to intermediate points on the same lines, was condemned by the fourth section of the original act. As this section, under the construction given it by the Supreme Court of the United States, did not prove efficacious in correcting the evils sought to be corrected by it, the Congress, under the 1910 amendment, laid an absolute inhibition upon a departure from the long-and-short-haul rule, subject only to the exception that this Commission might in special cases authorize a departure from this rule. The fourth section orders hereinbefore referred to were entered under the existing law. Necessarily, in an extensive readjustment of rates involving the application of principles materially different from those governing the former adjustment, some points

will receive a more favorable adjustment and other points a less favorable adjustment than theretofore existed.

It is our conclusion, and we find, that the rates involved in each of these proceedings have not been shown to be unreasonable or unjustly discriminatory, and that they have been justified by the defendants.

We have referred to rates participated in by the Alabama & Vicksburg of 6 cents from Vicksburg to Mobile and to the rates formerly in effect of 7 cents, Vicksburg to Hattiesburg and Laurel. No allegations of discrimination in the complaint are predicated upon these rates, except that it is stated that the rates are applicable over routes through Jackson, to which point the higher rate applies. The adjustments referred to were protected by Alabama & Vicksburg application No. 601, which, to the extent it is involved, was assigned for hearing with this complaint. The routes to Mobile are:

(1) Alabama & Vicksburg through Jackson to Newton, Miss., thence New Orleans, Mobile & Chicago; (2) Alabama & Vicksburg through Jackson to Meridian, thence Mobile & Ohio. Laurel and Hattiesburg are on the New Orleans & Northeastern, and the rates to these two points apply over the Alabama & Vicksburg through Jackson to Meridian and the New Orleans & Northeastern. Laurel is also on the New Orleans, Mobile & Chicago, and to this point the rate also applies via the line of this carrier and the Alabama & Vicksburg through Newton.

The Alabama & Vicksburg's explanation respecting the establishment of the rate to Mobile has been referred to. It is represented that relief has been granted under fourth section proceedings from Ohio and Mississippi river crossings to the Gulf ports, including Mobile, and while the route from Vicksburg to Mobile was not specifically considered, similar routes involving similar conditions were specifically considered and relief granted, and that the carriers have construed relief as having been granted from Vicksburg to Mobile. It is sufficient to say that authority has not been granted this defendant to maintain lower rates from Vicksburg to Mobile than to Jackson and intermediate points. Defendant has expressed a willingness to cancel this rate if it be found discriminatory. We may make no order in this proceeding respecting the rate, except with reference to the fourth section application noted. However, in view of the relatively short haul to Jackson as compared with the haul from Vicksburg to Mobile, we are unable to find that this defendant has justified the maintenance of a lower rate to Mobile on these commodities than to Jackson and other intermediate points. Its application for relief in this respect will be denied.

As has been stated, the rates to Hattiesburg and Laurel are now 9 cents, and the Alabama & Vicksburg does not seek to defend lower rates to these points than to Jackson and intermediate points. It, however, desires to open a route through Jackson in connection with the Gulf & Ship Island to Hattiesburg and Laurel, there being no rates in effect via such route, and it desires to maintain via that route rates that are lower than to intermediate points on the Gulf & Ship Island Railroad. That matter, however, is not before us upon this record.

The complaints in both proceedings and the various intervening petitions will be dismissed and an appropriate fourth section order will be entered.



No. 9393.

LUCAS E. MOORE STAVE COMPANY

v.

BOSTON & ALBANY RAILROAD COMPANY.



Submitted March 7, 1917. Decided April 9, 1917.



Defendant's demurrage rules in effect at Boston and East Boston, Mass., applicable on export freight not shown to be unreasonable, unjustly discriminatory, or otherwise in violation of the act. Complaint dismissed.

Andrew T. Knox for complainant.

George H. Fernald, jr., for defendant.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

In this proceeding the propriety of the demurrage rules of the Boston & Albany Railroad governing freight for export at Boston and East Boston, Mass., is challenged. The pertinent facts are that a carload of staves was forwarded from Greensborough, Ala., consigned to complainant at Cincinnati, Ohio, and was diverted en route to the complainant at East Boston. It arrived at destination June 16, 1916, and the car was released by complainant July 21, 1916. Demurrage charges of \$27 were collected.

Defendant's demurrage rules, effective April 20, 1916, provide, in part, as follows:

All carload freight for export, except as otherwise provided herein, whether covered by through bills of lading or local bills of lading, will be allowed fifteen (15) days free storage at Boston or East Boston, Mass.

• • • • •

Freight not consigned in shipping order and bill of lading for export which is ordered for exportation after arrival of shipments at Boston or East Boston, Mass., will be subject to the storage rates, rules, and regulations applicable on domestic traffic.

Complainant contends that as the staves were exported demurrage should have been assessed under the rules applicable to export shipments. The bill of lading covering the shipment did not show that the staves were for export.

For some time prior to the movement of this shipment the Boston & Albany had embargoed freight consigned for export through the ports of Boston and East Boston. This action was taken to relieve this carrier's terminals of congestion due to shippers forwarding freight to those ports without having first secured cargo space in outgoing vessels. The embargo was modified March 8, 1916, so as to permit freight for export to be received and moved to Boston or East Boston when the shipper had secured cargo space in steamers sailing from defendant's docks, provided such acceptance was authorized by defendant's foreign freight agent.

The practice attempted by complainant, and which he asks us to approve, was not permitted by the tariffs or by the terms of the embargo. Entirely apart from the embargo or any occasion therefor, complainant's failure to indicate on the bill of lading that the shipment was for export would deprive him of the 15 days' free storage for which he contends.

There is no showing that the charges, rules, or regulations were or are unreasonable, unjustly discriminatory, or otherwise in violation of the act. The complaint will be dismissed.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 892.
COAL AND COKE FROM NEW MEXICO POINTS.

Submitted February 26, 1917. Decided April 9, 1917.

Proposed increased rates on coal and coke in carloads to points in Texas, Oklahoma, and Louisiana from producing points in Colorado and New Mexico found not to have been justified, except as to certain specified points named or designated in the report.

George Williams for Colorado & Southern Railway Company.

J. C. Winfield for St. Louis Southwestern Railway Company of Texas, Houston & Texas Central Railroad Company, and Texas and New Orleans Railroad Company.

J. A. Lynch for Texas & Pacific Railway Company and receivers, and Denison & Pacific Suburban Railway Company.

W. J. Dowlin for Chicago, Rock Island & Gulf Railway Company and receiver.

Earl Cobb and *George A. Draut* for Southwestern Coal Company.

Albert Vogl, *Kenatz Huffman*, and *Carle Whitehead* for coal operators producing coal and coke in Walsenburg and Trinidad districts of Colorado.

E. W. Martindell for Huerfano Coal Company.

Frank M. Vaughn for various Colorado coal operators.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

By schedules of the Atchison, Topeka & Santa Fe Railway Company and the Colorado & Southern Railway Company, filed to become effective August 1 and September 15, 1916, respectively, it is proposed to increase rates on soft coal and coke in carloads to numerous points in the state of Texas and a few points in the states of Oklahoma and Louisiana, including Shreveport, from producing points in New Mexico and Colorado. The proposed increases range from 5 to 70 cents per ton, dependent on the destination. Upon protest of New Mexico and Colorado coal and coke shippers, the schedules were suspended until May 29 and July 13, 1917, respectively.

Coke, in carloads, generally takes the same rates as coal, in carloads, from the points of origin to the points of destination involved. The coal fields of Colorado are divided into groups for rate-making purposes. What is known as the Trinidad group is the basic rate district of the coal fields. To Texas points rates from what are known as the Walsenburg and Starkville groups are uniformly 25 and

15 cents per ton, respectively, higher than from points in the Trinidad group. The New Mexico group, which includes such shipping points as Raton, Preston, and Koehler, adjoins, and takes the same rates to Texas points, as the Trinidad group. *Cedar Hill Coal & Coke Co., v. C. & S. Ry Co.*, 17 I. C. C., 479. Hereinafter rates from the Trinidad group will be considered as illustrative of the general situation.

Rates from the Colorado coal districts to points in Texas and other states are published by the Colorado & Southern, and rates from the New Mexico district are published by the Atchison, Topeka & Santa Fe. In *1915 Western Rate Advance Case*, 35 I. C. C., 497, 603, hereinafter called the *Advance Case*, increased rates on coal and coke in western territory, including rates from points in Colorado and New Mexico to points in Texas, were found to have been justified. The increase in rates at that time was generally 10 cents per ton, but it was testified that through error in the publication of Colorado & Southern tariffs increases from the Colorado mines to certain destinations were not included. At the hearing the protestants asserted that they had no objection to the proposed increased rates in the suspended schedules which complied with the findings in the *Advance Case*, or to certain other increased rates hereinafter specified. The rates from Colorado points with respect to which the protestants take no exception are as follows:

Increases of 5 cents per ton are proposed to stations Enid to Renfrow, Okla., inclusive, on the Chicago, Rock Island & Pacific; and of 10 cents to stations Niblock to Menard, Tex., inclusive, on the Fort Worth & Rio Grande; to various stations in Texas on the Trinity & Brazos Valley; to stations Crisp to Kaufman, inclusive, on the Texas Midland; and, on slack coal only, to Anadarko, Okla., on the Chicago, Rock Island & Pacific. It was testified that these increases would put the rates in line with the increased rates to related points, or to points in the same general region, permitted in the *Advance Case*.

An increase of 15 cents is also proposed on nut coal only to stations Tyrone to Goodwell, Okla., inclusive, on the Chicago, Rock Island & Pacific. The proposed increased rates would remove certain fourth section departures.

An increase of 10 cents is proposed to Olney, Orth, and Newcastle, on the Missouri, Kansas & Texas. The proposed rates would preserve the usual relationship in rates between the Colorado and New Mexico fields.

An increase of 10 cents is proposed to stations Mesa to Crowder, Tex., inclusive, on the Houston & Texas Central, from the Starkville, Colo., district only. The proposed increased rates would preserve the usual relationship between the Starkville and Trinidad districts

Increases to Houston, Tex., of 40 cents via the Houston & Texas Central and of 30 cents via the International & Great Northern are proposed. The Trinity & Brazos Valley, the short line to Houston from northern points, published a scale which resulted in a rate to Houston of \$3.90; and the longer lines, the two above named, now desire to establish the same rate, thereby decreasing discrimination against intermediate points. The departures from the long-and-short-haul rule of the fourth section are protected by applications for relief, which have not been disposed of.

Increases of 39 cents to Galveston, Tex., 70 cents to Texas City, Tex., and 6 cents to Arcola, Tex., are also proposed. The proposed rate to all three points is \$4.20, and its establishment would remove all departures from the long-and-short-haul rule.

An increase of 1 cent is proposed to Artesia, Encinal, and Laredo, Tex., on the International & Great Northern, to give that carrier a better line-up of destination rates.

No protest by shippers of coal is on file against the proposed increased rates above described, and Colorado coal shippers who appeared at the hearing stated that they had no objection to their establishment. Under the circumstances and conditions shown of record we are of opinion that the order of suspension should be vacated as to them.

We turn now to consider the proposed increased rates to other points, situated in northeastern Texas and northwestern Louisiana, against which protests are made. The proposed increases range from 5 to 25 cents per ton on lump and slack coal and in some cases are greater on pea coal. The Atchison, Topeka & Santa Fe, the originating carrier on shipments of coal from New Mexico points, did not appear, and no justification was made by it of the proposed increased rates named in its suspended schedules. The Colorado & Southern, the originating carrier on coal shipped to Texas points from the Colorado fields, did not attempt to justify and in fact opposed the making of the proposed increases. The Fort Worth & Denver City was not represented at the hearing. This carrier joins with the Colorado & Southern in the haul of coal and coke from Colorado points to Texas points. The Colorado & Southern and the Fort Worth & Denver City have the long haul to the Texas points involved. It was stated at the hearing that the proposed increased rates were published at the demand of the delivering carriers, particularly the Texas & Pacific and St. Louis Southwestern.

A representative of the St. Louis Southwestern testified that in reaching a conclusion that the proposed increased rates should be published, comparisons were made with conditions existing from the southern Illinois coal fields. The distances from the latter fields are

considerably less, on the average, than from the former. Reductions ranging from 25 to 35 cents per ton were made from the Illinois fields, effective February 15, 1916. The increases complained of were proposed from the Colorado and New Mexico mines to bring about what the St. Louis Southwestern considers to be a proper relationship between Colorado and Illinois. The record shows that no coal has moved in the past from the Colorado and New Mexico mines to points on the St. Louis Southwestern. On the other hand, coal has moved freely from the Illinois points under the existing adjustment. Present rates to points on the lines of the St. Louis Southwestern have not induced traffic from Colorado and New Mexico, although they have been much lower than from Illinois points.

The only other respondent to introduce evidence to sustain the proposed increased rates was the Texas & Pacific. Exhibits were introduced showing the earnings under present and proposed rates from Colorado and New Mexico. The exhibits show that during 1915 the average earnings under the joint through rates on traffic from these points to the Texas & Pacific points were 4.4 mills per ton-mile. The average earnings of the Texas & Pacific on all its coal traffic for the year ended June 30, 1916, was 6.1 mills.

The respondents refer to *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 16 I. C. C., 387, where rates yielding 4.9 mills per ton-mile for a haul of 761 miles were approved. In that case we said, page 393, that—

The chief reliance of complainants in these cases is based upon comparisons of the per ton per mile revenue derived by the carriers from the transportation of coal from the Walsenburg district to the various points herein mentioned with the revenue per ton per mile from other coal-producing fields. We have examined the tables compiled by complainants showing these comparisons and have also carefully considered our former decisions in other cases wherein coal rates in this general territory have been passed upon. As stated in another case: "The rate per ton per mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable; but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it can not, therefore, be accepted as controlling in determining the reasonableness of rates." *Gustin v A., T. & S. F. Ry. Co. et al.*, 8 I. C. C., 277.

Reference is also made to *Colorado Coal Traffic Asso. v. C. & S. Ry. Co.*, 18 I. C. C., 572. It is asserted by respondents that the Commission in that case approved rates that yield 7 mills per ton-mile for distances of 661, 704, and 781 miles. In that case we considered a relationship of rates between different coal fields to common destinations. There was no finding as to the reasonableness *per se* of any of the rates involved. Other cases decided by the Commission are relied upon by the respondents to show that the rates in question

are, by comparison, reasonable. It is sufficient to state that the circumstances and conditions are not shown to be similar, and the comparisons are not, on that account, of great probative value.

The rates in question were increased 10 cents per ton as a result of the finding in the *Advance Case* and are now sought to be further increased. It is shown by the Texas & Pacific that the increase of revenue to it, on the average, from the proposed rates will amount to about 2 mills per ton-mile.

The protestants show that the Texas & Pacific participates in through rates on coal and coke in the same general territory which produce less yield per ton-mile than is shown to result from present rates from Colorado and New Mexico.

It is further contended by protestants, and we think with some force, that inasmuch as the originating carriers are opposed to the proposed increased rates, the question of divisions received by the Texas & Pacific out of the present rates is a subject of proper inquiry. The protestants show that to 30 points, to which increases are proposed, the present rates yield the Texas & Pacific, based on its division of the joint through rates, an average revenue of 5.9 mills per ton-mile.

It is further contended by respondents that present rates from Colorado and New Mexico producing points on soft coal and coke in carloads to the various destinations are too low when considered in relation to rates on the same traffic from other producing territories to the same destinations. Exhibits were submitted by a representative of the Texas & Pacific comparing distances and rates from Colorado and New Mexico mines with distances and rates from Oklahoma, Illinois, Arkansas, and Alabama mines. The Colorado and New Mexico distances average 713 miles; the Alabama distances, from 512 to 733 miles; the Illinois distances, from 467 to 692 miles; and the Oklahoma distances, from 60 to 407 miles. The Oklahoma average yield per ton-mile is 14.3 mills from near-by points and 8.3 mills from more distant points; the Arkansas average yield ranges from 6.84 mills to 7.39 mills; the Illinois average is 6.24 mills; the Alabama average from 7.23 to 7.35 mills.

The protestants show that Preston is the most central point in the Trinidad and New Mexico districts and that if the Raton district is taken into account, the average distance from all the mines to the points in Texas, shown by respondents, would be 42 miles less than that used by respondents. The respondents show that under present rates the return to them on traffic to Dallas, Tex., from the Raton district is over 5 mills per ton-mile, and the return via the line of the St. Louis Southwestern from Illinois mines to Dallas is 4.7 mills. The principal competition protestants meet in Texas is from Oklahoma

mines. The proposed increased rates apply largely in territory north and east of Dallas, where competition with McAlester, Okla., coal is keenest. It is contended by protestants that an attempt to help Alabama and Illinois shippers by increasing rates on coal and coke from Colorado and New Mexico points will unduly discriminate against the latter in favor of coal from the McAlester district, and will not benefit the shippers from Illinois and Alabama. The adjustment of rates as between Colorado and Oklahoma has been in effect, except for minor changes, since 1908. An increase in rates from Colorado and New Mexico, with no similar increase in rates from Oklahoma, the protestants assert, would deprive them of Texas business.

Under all the facts and circumstances shown of record, we are of opinion, and find, that, except as to rates hereinabove specifically described, respondents have failed to justify the proposed increased rates and the schedules will be ordered canceled. An appropriate order will be entered.

43 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 959.
LUMBER TO EASTERN COLORADO.

Submitted February 15, 1917. Decided April 9, 1917.

Proposed increased rates on lumber in carloads from California to points of destination in Colorado on the line of Chicago, Burlington & Quincy Railroad company east of Brush and east of Sterling, Colo., found not justified.

William W. Johnston for Chicago, Burlington & Quincy Railroad Company.

A. Larsson for California Redwood Association, California Sugar & White Pine Company, and Red River Lumber Company.

D. M. Swobe for McCloud River Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

Agent Countiss's tariff I. C. C. No. 1011 in supplement No. 9, published to become effective November 5, 1916, proposed to increase the commodity rates on lumber in carloads from certain points of origin in California to all destinations in eastern Colorado on the line of the Chicago, Burlington & Quincy Railroad Company, hereinafter referred to as the Burlington, east of Brush and east of Sterling, Colo., but the operation of such schedules was, upon protest, suspended until September 5, 1917.

The rates are grouped as to origins and destinations. The points of origin are in the so-called coast and Truckee groups. The Truckee group takes a differential of 7 cents per 100 pounds under the coast group. The points of destinations are in group J, which, from the coast group, of which McCloud, Cal., may be taken as representative, takes a rate of 40 cents per 100 pounds. Group J includes practically all points in Colorado, extends eastward as far as the Kansas-Colorado state line and into Texas as far south as Dalhart. The increases in issue are sought to be established by placing the points of destination in group G, which includes certain points in Colorado, Kansas, and Nebraska and takes from the coast group a rate of 50 cents per 100 pounds and from the Truckee group a rate of 47 cents per 100 pounds, thus increasing the rate from McCloud 10 cents per 100 pounds and from Westwood, Cal., a typical point in the Truckee group, 14 cents per 100 pounds.

The increases were instigated by the Burlington, the only carrier represented at the hearing, which stated that certain lumber interests

of the Spokane group of Washington complained that the present adjustment of rates from the coast and Truckee groups to the points of destination here involved as compared with the rates from the Spokane group subjected them to undue prejudice and disadvantage. No testimony was offered as to the reasonableness of the rates under suspension; in fact the Burlington stated that it has "perhaps overdone it a little bit in making so much of an advance." It offers to substitute in lieu of the suspended rates a scale of graded rates, the same in amount and similarly graded as are the rates from the Spokane group to the same destinations. This, it is testified, will place the producing territories on a rate parity and remove the alleged discrimination against the Spokane group. For example, the rates, in cents per 100 pounds, from the Truckee group to certain of the points of destination in Colorado would be as follows: To Galien, 36; Fleming, 38; Haxtun, 40; Paoli, 42; Holyoke, 44; and Amherst, 45, thus grading into the group G basis. But the proposed adjustment of graded rates is unacceptable to protestants, who contend that the present grouping from California, which has been in effect for at least eight years and is therefore presumptively reasonable, should not lightly be disrupted for the principle of graded rates applicable from the north Pacific coast producing territory. Protestants assert that as the 40-cent rate from the coast group applies to practically all of Colorado, the introduction of graded rates from the territory of origin here involved to these particular points of destination will be productive of discrimination. The interest of the Burlington is necessarily greater in respect of traffic from north Pacific lumber-producing points, as its line haul from that territory is considerably greater than from California.

Protestants submitted testimony and evidence as to ton-mile and car-mile earnings under the suspended rates, but it does not appear necessary to recite them here. It was also shown that California sugar pine and white pine lumber is competitive with yellow pine from the southwest. The rate on yellow pine from Beaumont, Tex., and other points in the yellow pine blanket, to Yuma, Colo., one of the points of destination involved in this case, is 37 cents per 100 pounds. Under the rates which the Burlington proposes to substitute for those under suspension the rate from the Truckee group to Yuma would be increased from 38 to 44 cents per 100 pounds.

Upon the record we are of the opinion and find that neither the suspended rates nor those proposed to be substituted therefor have been justified. An order will be entered requiring the cancellation of the items under suspension.

No. 8272.

HUTCHINSON TRAFFIC BUREAU

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted March 13, 1916. Decided April 9, 1917.

Certain class rates from Hutchinson, Kans., to points on the El Paso & Southwestern Railroad in New Mexico found to be unreasonable. Reasonable maximum rates prescribed for the future.

E. H. Hogueland for complainant.

Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company and the receivers thereof; Chicago, Rock Island & Gulf Railway Company; and El Paso & Southwestern Railroad Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

The Hutchinson Traffic Bureau alleges that defendants' class rates from Hutchinson, Kans., to points in Oklahoma, Texas, and New Mexico are "unjust and unreasonable and in violation of section 1 of the act to regulate commerce, and unjustly discriminatory and unduly preferential when compared with rates" to the same points from Kansas City and St. Joseph, Mo., Omaha and Lincoln, Nebr., Atchison, Leavenworth, Topeka, Emporia, and Wichita, Kans., El Reno, Oklahoma City, and Guthrie, Okla., and other commercial centers in the states named.

Hutchinson, a city of about 25,000 inhabitants and situated in the mid-southern part of Kansas, has numerous wholesale jobbing and distributing houses, mills, and industries engaged in manufacturing, buying, selling, and distributing various articles of merchandise in competition with the various other cities and towns, including those specifically mentioned, in favor of which undue discrimination is alleged.

The destination points here considered are on the Chicago, Rock Island & Pacific Railway and its subsidiary lines southwesterly from Hutchinson. They are situated in geographical order from and including Tyrone, 199 miles southwesterly from Hutchinson and the first station on the Chicago, Rock Island & Pacific Railway in Oklahoma, to and including Newman, the last station on the El Paso & Southwestern in New Mexico, about 705 miles southwesterly from Hutchinson and 20 miles northeasterly from El Paso, Tex.

The outbound traffic is jobbed in less-than-carload lots. There is no evidence as to the volume of the traffic to any of these destination points except that it is relatively thin, but, judging their relative importance by their population, and the testimony, we may assume that the more important are Guymon, Okla.; Dalhart, Tex.; Tucumcari, Santa Rosa, Vaughn, Carrizozo, Alamogordo, and Orogrande, N. Mex. From Kansas City, which may be taken as the principal Missouri River point with which complainant's members come in competition, the distance to these points, via the short line, is 219 miles greater than from Hutchinson, while from Topeka it is about 155 miles greater. Wichita, a competing jobbing point, is, via the route of movement from that place, a substantially greater distance from most of the destination points than is Hutchinson.

The rates complained of are those applicable under the western classification on classes 1, 2, 3, 4, 5, and A. Rates on beans, sugar, canned goods, and coffee, as set forth in the complaint, are, in fact, the class rates; those applicable on beans are the third-class, and on canned goods and coffee the fourth-class rates, respectively. With the exception of a few points in Oklahoma the specific rates named on sugar are the fourth-class rates.

Subsequent to the filing of the complaint many of the rates from the Missouri River points to the specific New Mexico destination points were changed. Except as will be explained later, rates from the Missouri River were, and are, the same as from Hutchinson to the destination points named, and the changes in the rates from the Missouri River accordingly resulted in changes from Hutchinson. As thus changed the rates in effect from Hutchinson to Liberal, Kans. (which is inserted for purposes of comparison only), and to the more important destination points embraced in the complaint, were, at the time of hearing, as follows:

To—	1	2	3	4	5	A	Beans, L. C. L.	Sugar, L. C. L.	Canned goods, coffee, L. C. L.
Liberal, Kans.....	57	59½	44	35	31	29	.....	.....	.....
Tyrone, Okla.....	66	55	46	39	39	39	46	32	39
Guymon, Okla.....	70	59	49	42	42	42	49	41	42
Goodwell, Okla.....	72	61	50	43	43	43	50	43	43
Texhoma, Okla.....	73	61	51	44	44	44	51	44	44
Stevens, Tex.....	80	72	63	52	76	79	63	52	52
Chamberlain, Tex.....	95	84	74	63	76	79	74	63	63
Dalhart, Tex.....	100	88	78	67	76	79	78	67	67
Naravisa, N. Mex.....	105	94	82	72	78	81	82	72	72
Tucumcari, N. Mex.....	122	104	91	80	78	81	91	80	80
Santa Rosa, N. Mex.....	138	118	106	92	82	85	106	92	92
Lesbia, N. Mex., to and including Endee, N. Mex. ¹	155	132	109	93	78	81	109	93	93
Pastura, N. Mex., to Alamogordo, N. Mex.....	170	145	119	102	85	88	119	102	102
Omlee, N. Mex., to Escondida, N. Mex.....	170	145	120	107	86	89	120	107	107
Turquoise, N. Mex., to Newman, N. Mex.....	170	145	121	111	86	89	121	111	111

¹ Stations Lesbia to Endee are on a branch of the Chicago, Rock Island & Pacific between Tucumcari, N. Mex., and Amarillo, Tex.

Hutchinson, like Wichita and the Missouri River cities, draws its jobbing stocks largely from St. Louis and from points east of the Mississippi River to and including the Atlantic seaboard, but at considerably higher rates than obtain to the Missouri River cities. To Santa Rosa, a point 453 miles southwesterly from Hutchinson and about 675 miles from Kansas City, and to points northeasterly therefrom, rates on classes 1, 2, 3, and 4 from Hutchinson are known as special jobbers' rates and are materially less than the jobbers' rates from Kansas City to the same points. Equal rates apply from Hutchinson, Wichita, and Kansas City on all classes to all points on the El Paso & Southwestern beyond Santa Rosa.

For the purpose of making rates into the southwest and to the destination points here involved, Hutchinson is in Kansas City territory and rates on classes 5 and A, which are not jobbing but car-load rates, are therefore the same from Hutchinson as from Kansas City, and thus the rates on classes 5 and A to Santa Rosa and points north are apparently high in comparison with the rates on classes 1 to 4. The rates on classes 4, 5, and A are the same to all points in Oklahoma, as may be observed from the table first above. Complainants assert that this fact and also the further fact that there are sharp increases in the rates to Oklahoma points over the rates to Liberal, the last station in Kansas, evidence inconsistencies in the rate adjustment.

It developed upon the hearing that the published through rates from Hutchinson to a number of points on defendants' lines in Texas were in excess of the combination of rates on Texhoma, a point on the Oklahoma-Texas state line. This disparity has since been corrected by reducing the through rates from Hutchinson to the measure of the combinations on Texhoma. The result may be illustrated by a comparison of the former and, as corrected, the present rates. It is Dalhart, which is perhaps the most important point affected.

	1	2	3	4
				City rates
Former rates from Hutchinson.....	100	88	78	the amounts
Present rates from Hutchinson.....	100	88		ightly with the
Amount of reduction.....				& S. F. Ry. Co.,
				or points in Kansas

While these reductions were substantial on so-called by the rates to admittedly afford complainants some relief, rates here involved, especially complaint against the alleged unreasonableness to the more remote territory. Not reasonably be expected

The first station south of Santa Rosa is a long ton-mile earnings with This is a small place. In fact, the entire line of the El Paso & Southw

desert with low density of traffic. The most populous towns south of Santa Rosa are Vaughn, 42 miles distant, with a population of about 700, and Alamogordo, 186 miles distant, population about 1,941. The rates are practically blanketed south of Santa Rosa to Orogrande but the increases on the first four classes to points immediately beyond Santa Rosa are sharp and substantial, as may be seen from the following table, in which the rates from Hutchinson and Kansas City to Santa Rosa are compared with rates to points beyond, which are the same from Hutchinson and Kansas City:

To stations.	Distance from—		1	2	3	4	5	A
	Hutchinson.	Kansas City.						
	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Santa Rosa:								
From Kansas City		676	165	140	115	90	82	6
From Hutchinson	453		138	118	106	92	82	5
Pintado	474	697	168	143	117	101	84	7
Vaughn	495	718	170	145	119	102	85	8
Alamogordo	630	862	170	145	119	102	85	8
Orogrande	676	899	170	145	121	111	86	9

Complainants submitted comparisons to show: (1) That the class rates complained of, as such, and as applied to sugar, canned goods, coffee, and beans, are higher for equal distances than are the corresponding class and commodity rates from other jobbing points such as Beatrice, Nebr., Topeka and Kansas City, Kans.; (2) that the rates on the first four classes from Hutchinson to destination points involved are substantially higher than on the corresponding classes to equidistant points from Wichita on defendants' lines; (3) that the rates on the first four classes complained of are materially higher than the corresponding class rates from Wichita to equidistant points in Oklahoma and Texas on the line of the Kansas City, Mexico & Orient Railway; and (4) that they are higher than are the rates from Hutchinson to equidistant points on the Atchison, Topeka & Santa Fe in the same general direction in Texas and New Mexico.

A comparison submitted by defendants of the southbound rates from Hutchinson with northbound rates from El Paso to points equidistant on their lines toward Hutchinson shows considerable variance and inconsistency in the progression of the rates northbound but it throws no light upon the reasonableness of the rates under attack. Coupled with the sparsity of population and light traffic density, the operating conditions are apparently adverse in the direction in which the traffic from Hutchinson moves. The elevation increases from 1,544 feet at Hutchinson to 6,666 feet at Corona, N. Mex.

Complainant's principal concern is with the effect of the relation of rates upon their ability to job in competition with Kansas City

and other commercial points. Their witnesses contended that the in and out rates from St. Louis and points east thereof through Hutchinson should be equalized with the in and out rates from Kansas City. This theory of equalization of jobbing rates is impracticable, even if it might be assumed that the rate factors necessary to bring about such an equalization would always be fair and reasonable.

Rates from St. Louis to Hutchinson were fixed by us in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673, and we there considered the relationship of rates from St. Louis as between Hutchinson and Kansas City. Rates from Kansas City, St. Louis, and Chicago to the New Mexico points covered by the complaint herein were fixed by us in *Corporation Commission of New Mexico v. Ry. Co.*, 34 I. C. C., 292, 305, and defendants point out that we there found that class rates from St. Louis to New Mexico on the classes mentioned in the complaint should be made by adding the following differentials to the Kansas City rates:

Class.....	1	2	3	4	5	A
Differential.....	30	25	21	18	15	16

The distance from Kansas City to Hutchinson is 219 miles, or approximately 70 per cent of the average distance from the Mississippi River crossings to Kansas City. Taking 70 per cent of the differentials fixed for St. Louis over Kansas City in *Corporation Commission of New Mexico v. Ry. Co.*, *supra*, as a base for fixing differentials Hutchinson under Kansas City, defendants obtain the following:

Class.....	1	2	3	4	5	A
Differential.....	21	17½	15	13	10½	11

Applying these amounts as differentials under the Kansas City rate to points north of Santa Rosa would result in materially higher rates, except on classes 5 and A, than those of which complaint is made.

South of Santa Rosa, by reason of the fact that there are no special jobbers' rates and the so-called normal basis of Kansas City rates applies, there are, as stated, not only sharp increases in the amounts of the rates but the per ton-mile returns increase slightly with the increased distances. In *State of Kansas v. A., T. & S. F. Ry. Co.*, *supra*, we fixed rates which yielded to the interior points in Kansas higher per ton-mile earnings than were yielded by the rates to the Missouri River cities and we think the rates here involved, especially in view of the thin traffic and distance to the more remote points on the El Paso & Southwestern, can not reasonably be expected to conform to the usual rule of decreasing ton-mile earnings with increasing distances.

Defendants, however, concede that the complaint is justified to a degree so far as it attacks rates on classes 1, 2, 3, and 4 to most of the points southwest of Santa Rosa on the El Paso & Southwestern, and they offer to readjust the rates on those classes from Hutchinson to the territory inclusive of those points by establishing jobbing rates based on differentials under Kansas City. They propose to divide this territory into three zones, the most northerly zone to take a differential of 20 cents on first class under Kansas City; the central zone, 15 cents on first class under Kansas City; and the southerly zone, 10 cents on first class under Kansas City. Applying a decreasing differential to the other three classes they suggest the following rates from Hutchinson to the points indicated:

To stations.	1	2	3	4
Pintado, N. Mex., to Varney, inclusive.....	148	126	107	98
Corona, N. Mex., to Carrizozo, inclusive.....	155	130	112	98
Polly, N. Mex., to Alamogordo, inclusive.....	160	135	115	100

South of Alamogordo to and including El Paso, Tex., the rates would continue to be the same as those from Kansas City.

Upon all the facts of record, we are of opinion and find that the rates on classes 1, 2, 3, and 4 from Hutchinson to Santa Rosa and points intermediate, taking into consideration the corrections made by defendants in the rates to Oklahoma points, have not been shown to be unreasonable or unjustly discriminatory. We are of the opinion, however, and so find, that the rates on classes 1, 2, 3, and 4 from Hutchinson to points southwesterly from Santa Rosa to and including Alamogordo are unreasonable, and that for the future reasonable rates on those classes may not exceed those which defendants concede would be reasonable to apply to the points indicated.

The rates on classes 5 and A seem not to be subject to the same criticisms as those on the first four classes. These rates gradually increase with increasing distance and, with the exception of the four Oklahoma points, appear to be uniform in their relation to the scale of rates required under the order to be made herein. The evidence does not show that they are unreasonable or unduly discriminatory.

The carriers will be accorded 30 days from the service of this report to file tariffs carrying rates in conformity to the requirements noted above in this report, failing which an order will be entered in accordance with the conclusions herein.

No. 8904.

McDAVITT BROS., OF BROWNSVILLE, TEX., ET AL.

v.

ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY
COMPANY ET AL.

Submitted March 7, 1917. Decided April 9, 1917.

Proceeding dismissed without prejudice for lack of necessary parties defendant.

Frank H. Wash for complainants.

Andrews, Streetman, Burns & Logue, and *R. C. Fullbright* for St. Louis, Brownsville & Mexico Railway Company; San Benito & Rio Grande Valley Railway Company; and International & Great Northern Railway Company and receiver.

T. J. Norton for Gulf, Colorado & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

HALL, *Chairman*:

The complainants are shippers of vegetables from producing points in the state of Texas. Their complaint, filed May 12, 1916, is brought against rail carriers having lines wholly within that state. They attack as unreasonable and unjustly discriminatory certain of defendants' tariff rules to which rail carriers in other states are parties, and which require that weights of cabbages and other vegetables in bulk, in carloads, shipped to interstate destinations from points on the line of the St. Louis, Brownsville & Mexico Railway Company, and other originating lines in Texas, shall be ascertained at points of origin, that correction of weights will be made only in case of "obvious error," that ventilating racks used in shipping cabbages shall be furnished by the shippers, and that "charges will be assessed on gross weight of contents of car," including the racks, subject to the established carload minimum. They ask us to find these rules unreasonable and to require the defendants (a) to publish rules providing for assessment of freight charges on the basis of weights at destination, under proper regulations and allowances; (b) to plainly define "obvious error"; (c) to furnish at their own expense the necessary ventilating racks; and (d) to transport the racks without charge therefor.

The defendants move for dismissal on the ground of lack of necessary parties defendant. The motion must be sustained. As already stated the complaint is brought only against carriers whose

lines do not extend beyond the state of Texas. The Gulf, Colorado & Santa Fe Railway Company was allowed to intervene at the hearing. Its line extends into the state of Louisiana. On the hearing it developed that the points to which complainants ship vegetables in bulk are St. Louis and Kansas City, Mo., Chicago, Ill., and destinations east of the Mississippi River and north of the Ohio River. The connecting and delivering carriers beyond the state of Texas are parties to the tariff schedules containing the rules under attack. No complaint is made against these carriers, and they have not been heard.

The complaint will therefore be dismissed, but without prejudice. An order will issue accordingly.



No. 9100.

PRUDENTIAL OIL CORPORATION

v.

MERCHANTS & MINERS TRANSPORTATION COMPANY
ET AL.

Submitted February 15, 1917. Decided April 9, 1917.

1. A showing that there was no accumulation of a particular commodity which was embargoed by a carrier does not of itself justify a finding of undue prejudice and disadvantage to shippers of said commodity in a case where there was an excessive accumulation of other freight. Whether or not an embargo resulted in undue prejudice and disadvantage is determinable only upon consideration of all of the facts, circumstances, and conditions in a particular case.
2. An embargo on fuller's earth by the Merchants and Miners Transportation Company not shown to have been unduly prejudicial. Complaint dismissed.

T. Rowland Slingluff and Henry B. Cole for complainant.

R. Walton Moore and Frank W. Gwathmey for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The questions presented for our determination in this case are whether or not an embargo declared by the Merchants & Miners Transportation Company on fuller's earth from Jacksonville, Fla.,

and Savannah, Ga., to Baltimore, Md., during the period from March 24 to August 2, 1916, subjected the complainant to undue prejudice and disadvantage; and, if so, whether or not the complainant is entitled to reparation. The complainant is a corporation engaged in the refining of petroleum products, its principal office being at New York, N. Y., and its refinery and shipping point at Wagner's Point, near Baltimore, Md. In the process of refining it uses fuller's earth, of which it derives its supply from Attapulugus, Ga., and Ellenton, Midway (Gadsden county), and Quincy, Fla. Its shipments are routed via the steamers of the Merchants & Miners Transportation Company, hereinafter referred to as the Merchants & Miners, from either Jacksonville or Savannah to Baltimore, and are switched from the steamship piers at Baltimore to Wagner's Point. Joint through rates are published from points of origin to destination.

The Merchants & Miners has been in existence since the fifties, and now operates six lines of steamers between various Atlantic ports, one of them running from Jacksonville and Savannah to Baltimore and one from Jacksonville and Savannah to Philadelphia, Pa. Prior to 1916 it had never imposed an embargo on any commodity. In the early part of that year the freight congestion affecting large areas of this country began to be felt by the boat lines, and the accumulation of rail traffic destined to New England, especially to points on the lines of the New York, New Haven & Hartford Railroad Company, resulted in the diversion to the New England lines of the Merchants & Miners of an enormous tonnage. In spite of extra sailings that company's facilities were overtaxed and from February 22 to March 13, 1916, it embargoed all freight northbound on its Providence line.

About the same time the congestion, which had been added to by the disappearance of tramp steamers formerly engaged in the transportation of lumber, was also felt on its lines from Savannah and Jacksonville to Baltimore and Philadelphia. Early in February, 1916, 4,000,000 feet of lumber had accumulated at Jacksonville for shipment via the Merchants & Miners' line to Baltimore, in addition to 4,500,000 feet destined to Philadelphia. By April 27 this accumulation had increased to approximately 13,000,000 feet. Though lumber was the principal commodity there was also a congestion of other freight at this port. There was, however, no accumulation of fuller's earth at Jacksonville, Savannah, or Baltimore.

The congestion at Savannah was not as severe as at Jacksonville, but as the boats first take freight at Jacksonville and then go to Savannah, the congestion at the former port was necessarily felt at the latter and if the embargo had been imposed only at Jacksonville much of the traffic usually routed via that port would have been

diverted to Savannah and the situation would not have been materially changed.

The Clyde line, operating from Jacksonville, Fla., Charleston, S. C., and Wilmington, N. C., to New York and Boston, Mass., embargoed fuller's earth from December 25, 1915, to January 10, 1916, and from March 11 to April 1, 1916. The Ocean Steamship Company, which has lines from Savannah to New York and Boston, also embargoed this commodity from April 5 to August 31, 1916.

On January 28, 1916, the Merchants & Miners embargoed scrap iron on its Philadelphia-Savannah-Jacksonville line northbound, and on March 9 the embargo was extended to include all northbound freight on this line except perishables. It was modified March 20 to permit the movement of all freight except clay, cotton waste, cotton factory sweepings, cotton linters, lumber, pig iron, and scrap iron. Fuller's earth was added to this March 24.

The first embargo on the Baltimore-Savannah-Jacksonville line was placed on scrap iron, northbound, effective February 23, 1916. Cotton linters were added to this March 8; cotton waste and cotton factory sweepings, March 16; clay and lumber of less than certain specified dimensions, March 23; and fuller's earth, March 24. The effect of these embargoes was to bar practically all freight from connecting lines at Jacksonville except perishables. Pig iron does not move via Jacksonville and has not been embargoed from Savannah to Baltimore.

On August 2, 1916, when the congestion was somewhat relieved, the embargo on fuller's earth was modified to permit the shipment of one car per week to complainant and of four cars per week to a firm at Philadelphia. On August 21 the embargo on this commodity was completely lifted.

As a result of the embargo complainant had to ship, at higher rates, via other rail-and-water routes or via all-rail routes, and the reparation it now seeks is this difference in charges on shipments of fuller's earth moving during the period of the embargo.

The complainant does not raise any question as to the right of a carrier, under certain circumstances, to embargo all freight or any particular commodity which has accumulated in a substantial amount, and admits that the circumstances in the present case justified an embargo. It contends, however, and asks us to find, that in a case where a carrier does not embargo all freight it is unduly prejudicial to embargo a commodity of which there is no accumulation at its termini.

The Merchants & Miners contends that the embargo of fuller's earth was not unduly prejudicial, but was made necessary by the traffic situation at Jacksonville and Savannah. Its witness pointed

out that it could neither foresee nor limit the amount of freight which was being forwarded by its connections, and testified that under the conditions existing in March, 1916, his company took into consideration the nature and probable tonnage of the various commodities likely to be tendered for movement via its steamers, its facilities for handling such commodities, the proper loading of its boats, and the extent of the congestion at its ports. He denied that the low earnings on fuller's earth had influenced his company in placing the embargo and in this connection called attention to the fact that scrap iron, linters, cotton waste, and lumber were embargoed prior to March 24, although the earnings are greater on those commodities than on fuller's earth, and that when the embargo was lifted on fuller's earth it remained in effect on some of the commodities named.

Complainant lays stress upon the fact that pig iron from Savannah to Baltimore was not embargoed. This commodity, as stated above, does not move via Jacksonville, and the Merchants & Miners' reasons for not embargoing it from Savannah were that its movement was not sufficiently large to cause embarrassment, and that owing to its great density it makes very desirable bottom ballast. The total movement of this commodity from Savannah to Baltimore from March 21 to October 1, 1916, was 1,300 tons. The revenue from pig iron is but little greater than from fuller's earth. Fuller's earth usually constitutes 30 per cent of the freight received by the Merchants & Miners from connecting lines at Jacksonville and 20 per cent at Savannah, but so large a proportion of the company's freight is local that this commodity amounts to only 8 per cent of its total tonnage from Jacksonville. From March 1, 1915, to March 24, 1916, the movement of fuller's earth from Savannah and Jacksonville to Baltimore aggregated more than 10,000 tons.

The question whether or not an embargo unduly prejudiced those who desired to ship a particular commodity upon which it was in effect is one of fact, determinable only upon consideration of all of the facts, circumstances, and conditions in a particular case, and a showing that there was no accumulation of that commodity at a carrier's termini does not of itself justify a finding of undue prejudice and disadvantage in a case where there was an excessive accumulation of other freight. Upon consideration of all the facts, circumstances, and conditions in this case we are of opinion, and find, that the embargo on fuller's earth is not shown to have subjected complainant to undue prejudice and disadvantage and that the complaint should be dismissed. It will be so ordered.

RATES ON DAIRY PRODUCTS.¹

Submitted February 9, 1917. Decided April 9, 1917.

Proposed increased rates on dairy products consisting of butter, butterine, oleomargarine, eggs, and dressed poultry in carloads between various points in western classification territory found not justified.

Kenneth F. Burgess, John F. Finerty, and T. J. Norton for respondents.

A. E. Helm for Public Utilities Commission of the state of Kansas.

E. H. Hogueland for Kansas Egg Shippers' Association and Topeka Traffic Association.

R. D. Rynder; H. K. Crafts; Cassoday, Butler, Lamb & Foster; Grant Thornburgh; M. S. Hartman; and W. B. Quarton for protestants.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

These cases involve the rates on dairy products consisting of butter, butterine, oleomargarine, eggs, and dressed poultry in carloads between various points in the territory west of Chicago and the Mississippi River. In some tariffs cheese, and in one tariff frozen rabbits, are also included with one or more of the above-named commodities.

In No. 880 the carriers propose to cancel the present commodity rates on these dairy products from points in Kansas, Nebraska, Missouri, and other states to Mississippi River crossings and related points locally, and proportionally on traffic destined east of the Indiana-Illinois state line, and to apply the western classification basis of third class in lieu thereof. In No. 887 they propose to cancel the commodity rate of 77 cents per 100 pounds on dressed poultry, any quantity, when shipped with a carload of fresh meats, or of fresh meats and packing-house products, from Texas producing points to Gulf ports for export to Cuba, leaving the class rates to apply. In No. 934 they propose to increase from \$1.01 to \$1.22 the rate on eggs, in carloads, from Kansas City to El Paso, Tex., and to make corresponding increases in the rates from other points of origin. In No.

¹ The proceeding embraces—Investigation and Suspension Docket No. 880, Western Trunk Line Rate Increases; Investigation and Suspension Docket No. 887, Dressed Poultry for Export; Investigation and Suspension Docket No. 934, Eggs to El Paso, Tex.; Investigation and Suspension Docket No. 969, Dairy Products to Montana; Docket No. 8952, Kansas Egg Shippers' Association v. Atchison, Topeka & Santa Fe Railway Company et al.

969 they propose to increase from \$1.35 to \$1.50 the rate on the dairy products above referred to from Missouri River territory to Montana common points and to make corresponding increases from other defined territories. The increased rates proposed in these four cases were published to become effective on various dates between July 20, 1916, and November 20, 1916, but on the protests of numerous interested shippers, commercial organizations, and state commissions they were suspended pending investigation.

The complaint in No. 8952 attacks as unjust, unreasonable, and unduly prejudicial the same rates from points in Kansas to Mississippi River crossings which the carriers are proposing to increase in No. 880. It was agreed at the hearing that the carriers' justification of the increased rates proposed in No. 880 might be considered as their defense of the rates attacked in No. 8952.

The general position of respondents is that all commodity rates on the dairy products here involved should be eliminated and that the corresponding third-class rates should be applied throughout western classification territory. They point to the fact that with some exceptions the third-class basis applies in western trunk line territory east of the Missouri River; that the third-class basis was approved on live poultry in *Rating on Live Poultry in Western Trunk Line Territory*, 32 I. C. C., 380; and that the second-class any-quantity rating in the official classification generally applies throughout that territory. To quote from their brief: "We contend that third class is the proper rating on these dairy products from a classification standpoint."

HISTORY OF RATES, RATINGS, AND CONCENTRATING ARRANGEMENTS.

A chronological history of the rates, ratings, and special concentrating arrangements on dairy products, including live poultry, will enable us to get a better perspective of the issues involved. The first western classification filed with this Commission was effective July 1, 1886. It classified butter, eggs, and dressed poultry, each in straight carloads, third class, minimum weight 20,000 pounds; and live poultry, in carloads, class A, minimum weight 20,000 pounds. On July 25, 1887, the third-class rating was made to apply on butter, eggs, and cheese, in straight or mixed carloads. On June 11, 1888, dressed poultry was added to the mixture with butter, eggs, and cheese. On January 1, 1891, butterine was added. On November 23, 1894, dressed poultry was taken from the mixture and made second class in straight carloads. On January 1, 1895, the mixture was abolished, the rating on butter and eggs, in carloads, canceled, and that on live poultry increased to third class. On January 1, 1896, the third-class rating on butter (also oleomargarine), eggs, and dressed poultry,

each in straight or mixed carloads, was restored. On January 1, 1900, the mixture was continued and the rating on live poultry further increased to second class, and the minimum weight reduced to 18,000 pounds. It therefore appears that the rating on butter, eggs, and dressed poultry has remained practically stationary at third class since 1886, while that on live poultry has been increased from class A to second class.

In *Regulations as to Storage of Dairy Products*, 35 I. C. C., 469, 471, it appeared that special arrangements to encourage the concentration of less-than-carload shipments of butter, eggs, and live poultry at large centers and the subsequent movement therefrom of carload shipments of butter, eggs, and dressed poultry, as well as of live poultry, were instituted about the year 1890 by the St. Louis & San Francisco Railroad, along its lines in Kansas and Missouri. These arrangements, which at first took the form of special less-than-carload commodity rates from the country points of origin to the concentration points, were gradually adopted by other lines, and finally became prevalent throughout Kansas, Nebraska, and southern Missouri. Later the less-than-carload commodity rates were canceled, and the practice of protecting the average carload rate from the points of origin of the less-than-carload shipments to the final destination of the consolidated carload shipment, subject to certain rules and restrictions, was inaugurated. In December, 1895, the St. Louis & San Francisco Railroad, considering the traffic from its principal concentrating point, Springfield, Mo., "pretty good business," published an exception to the western classification making live poultry, in carloads, fourth class. In *Violations of Act to Reg. Com. by St. L. & S. F. Ry. Co.*, 8 I. C. C., 290, 298, that line admitted that the earnings on live poultry at fourth-class rates were "fairly remunerative." Effective May 10, 1896, the same line established commodity rates of 35 cents and 45 cents from Springfield to St. Louis and Chicago, respectively, on dairy products, in carloads. Those rates were made primarily to place Springfield on a parity with Kansas City, the third-class rates from Kansas City to St. Louis and Chicago being 35 cents and 45 cents, respectively. This parity of rates as between Kansas City and Springfield is in effect on many other commodities. The combination of the less-than-carload commodity rates to Springfield and the new carload rates from Springfield made aggregate rates less than the through third-class rates from local points beyond Springfield. Accordingly the carriers, led by the Kansas City, Fort Scott & Memphis Railway, which operated in connection with other lines via Kansas City, established carload commodity rates from points in southwestern Missouri and southeastern Kansas to St. Louis and Chicago. In June, 1896, the

Missouri Pacific published carload commodity rates about 15 cents less than the third-class rates from all points on its line south of the line of the Union Pacific. This basis was finally adopted by all lines. As time went on it spread over the entire state of Kansas, and ultimately commodity rates were also published from points in Oklahoma, Arkansas, Texas, and other western and southwestern states. Originally these commodity rates applied only on eggs and dressed poultry. Later butter was added, and still later butterine and oleomargarine.

From time to time changes have been made in the third-class rates and not in the commodity rates on dairy products. For example, in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673, we reduced the class rates between points in Kansas and St. Louis and Chicago, but the carriers made no corresponding reductions in the commodity rates on dairy products. The result is that to-day the commodity rates on dairy products from points in Kansas average about 10 cents less than the third-class rates.

In the latter part of 1914 the carriers filed tariffs canceling the special concentration arrangements above referred to. These tariffs were suspended and became the subject of the investigation in *Regulations as to Storage of Dairy Products, supra*. The carriers contended among other things that the practice referred to was abnormal as well as wrong in principle. We approved the suspended tariffs. In February, 1916, the carriers voluntarily established commodity rates on less-than-carload shipments of dairy products from the country points of origin to the concentration points. It is a significant fact that these commodity rates on less-than-carload shipments are much lower than third class, the basis now proposed on carload shipments. In the meantime the live poultry shippers had filed formal complaint, *Live Poultry & Dairy Shippers' Traffic Asso. v. A., T. & S. F. Ry. Co.*, Docket No. 8579, now pending, against the third-class basis on live poultry, which basis we permitted to become effective in *Rating on Live Poultry in Western Trunk Line Territory, supra*. On June 15, 1916, the complaint in No. 8952 was filed attacking the carload commodity rates on butter, eggs, and dressed poultry from Kansas shipping points to the east; and shortly thereafter the carriers filed the tariffs under investigation in this proceeding.

In October, 1916, the carriers, desiring to settle their differences with the shippers "out of court," arranged a meeting with practically all the protestants herein except the complainants in No. 8952. No agreement was reached regarding the commodity rates here involved. The carriers have since restored the old concentrating arrangement under which the average carload rate from the points of origin of the less-than-carload shipments to the final destination

of the consolidated carload shipment is protected, subject to certain restrictions and rules. The only difference between the new arrangement and the old one, which they characterized as "wrong in principle" in the *Concentration Case, supra*, is an increase from 5 cents to 7½ cents in the concentration charge. An increase from 20,000 pounds to 21,000 pounds in the minimum carload weight was consented to by the shippers, but this increase has not been made, according to the tariffs on file with us. The new arrangement became effective in March of this year.

The foregoing history shows that for 30 years in some sections, and lesser periods in other sections, the dairy products produced in the territory involved herein have moved to market on less than the classification basis. The basis of the rates has varied from time to time, but it has always been something less than third class. In other words, it can not be said that third class is the normal basis on dairy products in this territory.

CHANGES IN SHIPPING METHODS.

During the period covered by the foregoing history the methods of preparing and shipping dairy products have been greatly improved. Prior to 1887 or 1888 there were few creameries and practically no cold-storage houses in this territory. On shipments of butter the refrigeration was very crude. The butter was packed with ice in refrigerators something on the order of the family refrigerator. It was not until about the year 1898 that shipments of butter in carload quantities were started. To-day it is precooled, sometimes frozen solid, in modern equipped creameries before being loaded. It is transported exclusively in refrigerator cars.

The improvements made in preparing and shipping eggs have been even more marked. Unless eggs are kept cool they deteriorate very fast. Before the advent of cold-storage houses there was no way to precool eggs, and deterioration set in before they were loaded. Even when they were loaded in refrigerator cars, while the outside and top tiers of cases were cooled, the inside tiers of cases were not, with the result that the eggs in the inside cases spoiled in transit. To-day eggs are graded and candled in cold-storage houses. They are artificially cooled to the temperature of the refrigerator car in which they are to be loaded. The packages and fillers in which they are packed have been greatly improved. Years ago eggs were re-shipped largely in secondhand cases. To-day the carriers have rigid rules and regulations defining the "standard egg case," and shippers are required to certify on shipping tickets or bills of lading that

shipments are packed in "standard cases and in accordance with the requirements of the classification." Higher rates must be paid on shipments packed in secondhand cases, so that shippers are confining themselves to the use of new standard cases.

Prior to the year 1900 poultry to be dressed for shipment was scalded in hot water, picked, and then cooled in ice water. It was shipped in barrels packed with ice. To-day it is nearly all dry picked and dry packed in boxes. It is precooled or chilled to a low temperature and shipped in refrigerator cars.

The record indicates that the foregoing improvements in shipping methods have progressed to a greater degree in the territory west of the Missouri River than in any other part of the country. The railroads in that territory have cooperated with the shippers in conducting campaigns of education along this line. For example, special trains manned by government experts in refrigeration and preparation of dairy products for shipment have been and are run throughout that territory.

VOLUME OF TRAFFIC.

No direct evidence of the aggregate volume of the movement of dairy products in the territory here in question was presented, but some idea of the increased movement from points in Kansas and Nebraska may be gained from the following table showing the increased production in those states:

	1880	1890	1900	1910
Eggs, in thousand dozens:				
Nebraska.....	7,167	23,301	41,132	46,980
Kansas.....	17,432	42,585	73,191	81,650
Fowls, in thousands:				
Nebraska.....	1,839	7,969	7,812	15,274
Kansas.....	4,397	16,977	12,556	24,583
Butter, in thousand pounds:				
Nebraska.....	9,791	33,895	46,245	49,960
Kansas.....	21,683	50,435	59,837	43,360

During the period between the years 1889 and 1909 the annual production of butter in western classification territory increased from 558,993,000 pounds to 987,712,000 pounds; that in official classification territory decreased from 525,252,000 pounds to 467,628,000 pounds. The annual production of eggs during the same period in western territory increased from 384,959,000 dozens to 867,543,000 dozens; in eastern territory from 326,984,000 dozens to 478,602,000 dozens.

The increased production and improved shipping methods have contributed to increase the movement many fold since the institution of the present commodity rates.

Some idea of the volume of the movement in cars may be gained from figures presented by four lines. Between the years 1907 and 1916 the movement of dairy products, including live poultry, from points on the Chicago, Burlington & Quincy Railroad increased from 7,437 cars to 8,900 cars. During the same period this line's movement of fresh meat decreased from 27,447 cars to 15,683 cars. For the ten months ended April 30, 1916, the movement of dairy products, including live poultry, from points on the St. Louis & San Francisco Railroad was 2,406 cars; of fresh meats, 2,004 cars. For the year ended June 30, 1916, the movement of dairy products from points on the Santa Fe in Kansas, Oklahoma, and Texas to Missouri River cities and points east thereof was 2,126 cars; of fresh meats and packing-house products, 2,323 cars. During the same period the movement of dairy products from points on the Chicago, Rock Island & Pacific amounted to 5,609 cars.

Respondents presented no exhibits showing the movement of commodities classified third class and actually charged third-class rates, nor any evidence that the movement of any such commodities had increased to the same extent as that of dairy products. While fresh meat is classified third class in the western classification, it moves on commodity rates very much lower than those on dairy products. Protestants filed an exhibit showing 70 per cent of all the commodities classified third class, in which it is stated that the movement of the commodities specified is less than that of dairy products, and that many of them, such as vegetables, fish, and oysters, are accorded commodity rates less than those on dairy products.

VALUE OF DAIRY PRODUCTS.

The average value of dairy products has increased in recent years. One exhibit of respondents shows the following range of average wholesale prices in eastern markets:

Average wholesale prices, in cents.

Year.	Creamery butter, per pound.		Fresh eggs, per dozen, New York.	Dressed poultry, per pound, New York.	Live poultry, per pound, New York.	Fresh beef, per pound.	
	Elgin, Ill.	New York.				Chicago.	New York.
1890.....	22.38	22.76	19.45	.....	.....	.....	6.88
1895.....	20.64	21.37	20.02	.....	.....	.....	7.92
1900.....	21.78	22.45	19.77	.....	.....	.....	8.04
1905.....	24.29	24.89	27.12	.....	.....	.....	8.02
1910.....	29.77	30.07	32.58	17.61	16.91	11.54	10.27
1915.....	28.46	29.88	25.69	17.75	16.13	12.89	12.55

This table shows that the increase in the wholesale prices of dairy products has not been as great as that of fresh beef. The average prices at the western points of origin were of course very much less than the above amounts. No evidence was presented showing the range in values of commodities classified third class and actually charged third-class rates.

LOSS AND DAMAGE CLAIMS.

The evidence of respondents in respect to loss and damage claims was general in character and confined to three lines. The Chicago, Burlington & Quincy Railroad showed that during the year ended June 30, 1916, its total claim payments were the following percentages of the gross revenue received from the commodities named: Butter, eggs, and dressed poultry, 4.366 per cent; live poultry, 2.5 per cent; fresh meat, 0.9 per cent. During the year 1914 the percentages were: Dressed poultry, 2.3 per cent; eggs, 9 per cent; butter and cheese, 1.5 per cent; fresh meat, 2.2 per cent. During the year 1913 the percentages were: Dressed poultry, 9 per cent; eggs, 7.9 per cent; butter and cheese, 1.9 per cent; fresh meats, 1.3 per cent. During the year 1912 the percentages were: Dressed poultry, 1.4 per cent; eggs, 7.7 per cent; butter and cheese, 3 per cent; fresh meats, 1.3 per cent. During the same years the percentage on all carload freight was 1.4 per cent, and on less-than-carload freight, 3.4 per cent. During the year ended June 30, 1916, the Chicago & North Western Railway payments were as follows: Butter and cheese, 1.3 per cent; eggs, 6.7 per cent; poultry, game, and fish, 3.9 per cent; all carload freight, 0.9 per cent. For the year ended June 30, 1915, the Chicago, Rock Island & Pacific Railway payments were as follows: Eggs, poultry, and dairy products, 6.67 per cent; dressed meats, 2.52 per cent; packing-house products, except fertilizer, 0.92 per cent; live stock, 6.68 per cent; all carload freight, 2.72 per cent.

No comparisons were submitted with commodities classified third class and actually charged third-class rates. Fresh meat, packing-house products, and live stock move on commodity rates very much lower than those on dairy products. A comparatively small percentage of all carload freight, which includes products of agriculture, of animals, of forests, of mines, as well as manufactures, moves on class rates, and that small percentage moves largely on class A rates or lower. On the Chicago & North Western Railway the average ton-mile earnings on dairy products, in carloads, is in excess of 19 mills, and the average haul over 300 miles. On all carload freight its average ton-mile earnings are around 7 mills and its average haul about 170 miles. Deducting the average claim payments on dairy products,

we find the net earnings per ton-mile thereon to be about 18.17 mills, or over twice the ton-mile earnings on all carload freight, without making any deduction for loss and damage claims.

Protestants contend that the figures presented by respondents are not representative. They further contend that in the past a large percentage of the claims on eggs, of which there is a heavy movement to eastern territory, have been due to causes existing on eastern lines, and that under the freight claim association rules the western lines must pay a pro rata percentage of such claims. It is also pointed out that since our decision in *New York Mercantile Exchange v. B. & O. R. R. Co.*, 36 I. C. C., 156, rules have been adopted by eastern lines which are calculated to reduce the claims on eggs.

Many shippers gave specific figures as to the extent of their claims on dairy products. One testified that his loss and damage claims amounted to less than 1 per cent of the freight charges paid. Another showed that on 313 cars of poultry and eggs shipped during the year 1916 his loss and damage claims amounted to approximately 27 cents per car. Another shipper handling approximately 50 cars per year has had no claims whatever during the past eight or nine years. Another shipper handling 200 cars per year testified that his claims did not amount to more than 1½ per cent of the freight charges paid. A shipper of 1,045 cars during the year ended February 1, 1916, testified that his claims thereon amounted to 27 cents per car. The representative of an association of 160 shippers stated that the claims of his members did not average 1 per cent of the freight charges paid. The traffic manager of a large packing company testified that their average claim on dairy products was less than \$1 per car, and the average freight charges paid over \$125 per car. An exhibit was also filed showing the composite experience of about half the members of the complainant in No. 8952 during the year ended June 30, 1916. This exhibit shows that on butter these members paid aggregate freight charges of \$135,395.69 and received total claim payments of \$59.27; that on eggs they paid total freight charges of \$374,448.43 and received total claim payments of \$1,445.91; that on dressed poultry they paid total freight charges of \$80,951.74 and received total claim payments of \$20.77.

The consensus of opinion expressed by the shippers was that the improved shipping methods had reduced the claims on dairy products. An exhibit prepared from a statement contained in the annual report of this Commission for the year ended June 30, 1915, showing the ratio of the claims paid on particular commodities to the aggregate claims paid on all commodities, indicates that the ratio on poultry, game, and fish is the lowest, and on butter and cheese the third lowest, of all commodities.

AVERAGE CAR LOADING.

The minimum weight on butter, eggs, and dressed poultry is 20,000 pounds. The minimum weight on live poultry is 18,000 pounds, subject to rule 6-B. The minimum weight on commodities classified third class, in carloads, in the western classification ranges from 12,000 pounds to 30,000 pounds.

On the Chicago & North Western Railway the average loading of butter and cheese is 11.3 tons; eggs, 11 tons; and dressed poultry, 11.4 tons. On the Chicago, Rock Island & Pacific Railway the average loading of all dairy products is 11.4 tons. On the St. Louis & San Francisco the average loading of live poultry is 10 tons; dressed poultry, 11 tons; eggs, 11 tons; butter, 11 tons; cheese, 13 tons. On the Atchison, Topeka & Santa Fe Railway from Kansas, Oklahoma, and Texas to Missouri River and points east thereof the average loading of dressed poultry is 12.08 tons; butter, 11.49 tons; eggs, 10.88 tons. No other lines presented information along this line. No comparisons were submitted with the average car loadings of commodities classified third class and actually charged third-class rates.

The record indicates that heavier loading could be secured if the minimum carload weight were increased. The representative of one large concern shipping butter, eggs, and dressed poultry stated that their average car loading is 25,200 pounds. Another large shipper testified that his average loading of eggs is about 23,500 pounds, and of butter 25,000 or 26,000 pounds, and that he had loaded butter as heavily as 50,000 pounds.

FACTS REGARDING EQUIPMENT USED.

As already explained, dairy products are now transported exclusively in refrigerator cars throughout the territory involved herein. Generally speaking, the equipment used is railroad owned, not privately owned. Refrigerator cars cost more than ordinary box cars and are more expensive to maintain. In 1915 the Atchison, Topeka & Santa Fe Railway paid \$1,448 each for refrigerator cars and \$898 each for box cars. The size and kind of box cars was not indicated. Its cost of maintaining refrigerator cars averages \$13.19 per month, and of box cars \$5.44 per month. The average car-mile earnings and the average service, represented by number of miles per month, of each class of equipment was not shown.

Refrigerator cars are heavier than ordinary box cars. The Chicago, Rock Island & Pacific weighed 105 of its own refrigerator cars, 2,893 ordinary box cars, and 468 private refrigerator cars, with the following result: The average weight of its own refrigerator cars was 21.8

tons; of the box cars, 18.8 tons; and of the private refrigerator cars, 23 tons.

The empty movement of railroad-owned refrigerator cars, the cars in which dairy products are transported, is not much greater than that of box cars, but very much less than that of privately owned refrigerator cars in which fresh meats and packing-house products are loaded. On the Chicago, Rock Island & Pacific Railway the empty movement of its own refrigerator cars is 29.7 per cent of the loaded movement; of box cars, 29.2 per cent of the loaded movement; of private refrigerator cars, 53.1 per cent of the loaded movement; and of all cars, 38.6 per cent of the loaded movement. On the Atchison, Topeka & Santa Fe as a whole the empty movement of their own refrigerator cars is 24 per cent of the loaded movement; and of packers' refrigerator cars, 78 per cent of the loaded movement. On its lines east of Albuquerque, but not including its Texas lines, the empty movement of company refrigerator cars is 23 per cent of the loaded movement; box cars, 15 per cent of the loaded movement; and of packers' refrigerator cars as follows: Armour & Company cars, 82 per cent; Cudahy Packing Company cars, 90 per cent; Morris & Company cars, 96 per cent; Swift & Company cars, 76 per cent.

About 8,000 pounds of ice is loaded in the refrigerator car for dairy products. It appeared in the *1915 Western Rate Advance Case*, 35 I. C. C., 497, 594, that an average of from 8,000 to 6,000 pounds is loaded in the packer's car for fresh meat and packing-house products.

COMPETITIVE COMMODITIES AND THE RATES THEREON.

Respondents contend that dressed poultry competes with live poultry, and that as we approved the third-class rating on live poultry we should approve the same rating on dressed poultry. As before stated, the third-class rating on live poultry is now under attack in *Live Stock, Poultry & Dairy Shippers Traffic Asso. v. A., T. & S. F. Ry. Co.*, Docket No. 8579. The principal movement of live poultry is from country points to concentration points where it is dressed. This movement to the concentration points is largely made up of comparatively short hauls, whereas the movement of dressed poultry from the concentration points is made up of comparatively long hauls. There is some movement of live poultry for long distances, principally to New York, but the extent of this long-haul movement is relatively small. It should also be pointed out that live poultry now moves in special poultry cars that can not be used for any other traffic. The empty movement of such cars is 100 per cent of the loaded movement. The empty movement of the refrigerator cars in which dressed poultry and other dairy products are loaded does not

average more than 35 per cent of the loaded movement. The third-class rates on live poultry include the transportation of a caretaker; no passenger transportation is furnished in connection with the transportation of dressed poultry. In the *Live Poultry Case, supra*, it appeared that the car-mile earnings on dressed poultry at the present commodity rates are substantially the same as the car-mile earnings would have been on live poultry had the third-class rates been charged.

Protestants represent that dairy products, i. e., eggs and dressed poultry, compete with dressed meats as food products. These food products are produced in the same sections, are in many instances handled by the same dealers, are transported in the same kind of cars, are shipped to the same final markets, are subject to the same influences affecting prices, and compete with each other for consumption by the same people. In view of these facts protestants represent further that there should be some relation between the rates applying on eggs and dressed poultry as against the rates on dressed meats. Witnesses for the two largest dressed meat packing companies in the country testified that there should be a rate relation. Witnesses for respondents testified to the same effect. Only two reasons were suggested why the rates on dressed meats might properly be lower than those on eggs and dressed poultry, namely, the greater volume of the movement of dressed meats and the fact that dressed meats sometimes move in trainloads. The record does not indicate that either one of these reasons is present in the territory west of the Missouri River. On the other hand, the percentage of empty to loaded movement of the cars in which dressed meats are transported is very much greater than that of the cars in which dairy products are transported.

THIRD-CLASS RATES ON CARLOAD SHIPMENTS.

Protestants contend that the first four class rates are generally recognized as rates applicable on less-than-carload shipments and not on carload shipments. For many years these rates between points in the territory here in question were published in the tariffs as rates applicable on less-than-carload shipments. Being rates applicable primarily on less-than-carload shipments, they include the cost of loading and unloading the freight over the station platforms and the other costs peculiarly incident to the handling of such shipments.

In *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, 245, 255, 258, we found reasonable, base rates of 22 cents, 18.7 cents, 15.4 cents, and 13.2 cents on the first four classes, respectively. These base rates were so constructed as to cover the terminal costs of handling less-than-carload shipments at representative stations in Nebraska. They

comprise all expenses incurred between the time the car arrives in the receiving yard on inbound freight and the delivery of the car in the departing yard on outbound freight, including a proportionate amount of the general expenses, taxes, depreciation, and return upon property. It was testified in the present case that the expense of switching a car to the freight house and into the outbound train at the departing yard is substantially the same as that of switching a car to an industry and picking it up again after the shipper has loaded it. It would therefore appear that the base rates referred to above include some expenses which are common to both less-than-carload and carload shipments. In the above case, however, we stated that the direct station costs of handling less-than-carload shipments are substantially greater than those of handling carload shipments.

In *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, 91, defendants showed that the terminal and station costs of handling less-than-carload shipments at representative stations in Texas aggregate \$1.77 per ton at one end of the route, or \$3.54 per ton at both forwarding and receiving ends. The \$1.77 per ton did not include any portion of what might be called overhead expenses, such as taxes, interest upon investment, etc., but it did include 61 cents per ton for switching expenses. By deducting 61 cents per ton from \$1.77 per ton we get \$1.16 per ton, approximately the additional expense incurred in handling less-than-carload freight over carload freight at one end of the route. If the extra expense at the other end of the route is as great, the actual extra expense of forwarding and receiving less-than-carload shipments over carload shipments at the Texas stations is approximately \$2.32 per ton, or 11.6 cents per 100 pounds.

The contention made by protestants in connection with the above facts is that as dairy products moving in carloads do not incur the extra terminal and station expenses incident to less-than-carload traffic they should not be charged rates which include such expenses.

We now pass to a consideration of the contentions made and the evidence offered in respect to the specific rates in issue. The rates attacked in No. 8952 and those suspended in No. 880 will be considered under the head of

DAIRY PRODUCTS FROM KANSAS, NEBRASKA, ETC., POINTS TO THE EAST.

As before indicated, the commodity rates on dairy products from Kansas and Nebraska points to Mississippi River crossings and related points average approximately 10 cents per 100 pounds less than the corresponding third-class rates. Many of the reasons offered by respondents for desiring to cancel these commodity rates and to apply in lieu thereof the third-class rates may be summed up in the

contention that the third-class rates now apply on the bulk of the traffic and should therefore apply on the traffic here in question. In the first place the record does not show conclusively that the third-class basis now applies on the bulk of the traffic. Only one railroad submitted any information along this line. The Chicago, Burlington & Quincy Railroad showed that during the year ended June 30, 1916, it received the third-class rates on 5,668 cars and commodity rates on 1,700 cars.

It appears, however, that the third-class basis applies from Missouri River cities and points east thereof to Mississippi River crossings. In *Commercial Club of Omaha v. B. & O. R. R. Co.*, 19 I. C. C., 397, the through rates on butter, eggs, and dressed poultry, in carloads, from Omaha points in central freight association and eastern trunk line territories were attacked on three grounds: (1) That the through rates, being made up of the combination of intermediate local rates, were unreasonable by virtue of that fact; (2) that the factors east of the Mississippi River were any-quantity rates, and that as the expense of handling carload traffic is less than that of handling less-than-carload traffic lower rates should be established on carload traffic; and (3) that the rates on butter, eggs, and dressed poultry are materially higher than the rates on other perishable products such as fresh meats, fruit, and vegetables. For reasons stated in the report the complaint was dismissed. It does not follow, as argued by defendants herein, that we approved the third-class basis for general application.

Protestants point out that the percentage relation of the third-class rates to the first-class rates between Missouri River points and Mississippi River points is very different from that of the third-class rates to the first-class rates from points west of the Missouri River. The third-class rate from the Missouri River points to Mississippi River crossings is 58 per cent of the first-class rate. In the *Missouri River-Nebraska Cases*, *supra*, we fixed the third-class rates between points in Nebraska and interstate points on the Missouri River at 70 per cent of the first-class rates. In *Iowa State Board of Railroad Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 563, we fixed the third-class rates between points in Iowa and points in Nebraska at 66½ per cent of the corresponding first-class rates. The average third-class rate from 21 representative shipping points in Kansas to St. Louis is 66 per cent of the average first-class rate from and to the same points.

The protestants, who ship dairy products in carloads from points in Nebraska, showed that the third-class rates from points west of Lincoln to Mississippi River crossings are the aggregates of the third-class rates from the points of origin to Lincoln and the third-

class rates from Lincoln to Mississippi River crossings. The rates from the points of origin to Lincoln are constructed on the same scale as that which we prescribed in the *Missouri River-Nebraska Cases, supra*. The rates which we prescribed in those cases on the first four classes were made sufficiently high to be reasonable for application on less-than-carload traffic and therefore include the terminal costs peculiarly incident to less-than-carload traffic. On third-class traffic the base rate fixed to cover such costs at both ends of the route was 15.4 cents. Carload traffic moving from points in Nebraska west of Lincoln to Mississippi River crossings is properly chargeable with the expense of but one terminal in Nebraska, whereas the third-class rates proposed for application on carload shipments of dairy products include the expense of three terminals, one at the point of origin and two at Lincoln. The present commodity rates on dairy products in carloads from practically all points in Nebraska west of Lincoln to Mississippi River crossings are greater than the third-class rates, less 15.4 cents, between the same points.

The average earnings per ton-mile on the present commodity rates from 56 representative shipping stations in Kansas to St. Louis and Chicago are 25.5 mills and 21.4 mills, respectively, for average short-line hauls of 467 miles and 648 miles, respectively. The average earnings per ton-mile on all freight received by 15 lines participating in the movement of dairy products in carloads from and to the points above referred to range from 6.32 mills to 11.71 mills for average hauls ranging from 114 miles to 360 miles.

The average commodity rate on dairy products, in carloads, from 56 representative shipping points in Kansas to St. Louis is 60.1 cents, and the average distance 467 miles. The concentration rate applicable on less-than-carload shipments of dairy products for the same distance was 54 cents.

The rates on dairy products, in carloads, from Wichita and Topeka, representative shipping points in Kansas, to St. Louis are 66 cents and 39 cents, respectively. The rates on fresh meat, in carloads, from and to the same points, are 32 cents and 24½ cents, respectively. The rate of 24½ cents also applies from Wichita to St. Louis on traffic destined east of the Indiana-Illinois state line. The rate on dairy products, in carloads, from Lincoln, a representative point in Nebraska, to St. Louis is 39 cents, while the rate on fresh meat, in carloads, from and to the same points, is 22½ cents.

In *Butter & Eggs from Topeka to the Southeast*, 27 I. C. C., 692, we found that the respondents had not justified the proposed cancellation of the commodity rates on dairy products, in carloads, from Topeka, Kana., to Memphis, Tenn., and that those rates ought not to be exceeded for the future.

The southern classification, which applies from Chicago, St. Louis, Ohio River crossings, and Memphis to points in southeastern territory as well as between points in that territory, provides that dressed poultry and fresh meat may be shipped in straight or mixed carloads on the same classification basis. Throughout that territory there are also commodity rates applicable on straight or mixed carloads of dressed poultry and fresh meat. Meat packing houses at Missouri River cities, Oklahoma, and Fort Worth compete with packing houses at Chicago, St. Louis, and Ohio River cities in southeastern territory. At the present time respondents herein maintain commodity rates from Missouri River cities, Oklahoma City, and Fort Worth and certain other Texas points to points in southeastern territory which provide that dressed poultry may be shipped in mixed carloads with fresh meat at the rates applicable on fresh meat. It is proposed to cancel these commodity rates. The interested protestants contend that the cancellation of these rates would operate unjustly to discriminate against them in favor of their Chicago, St. Louis, and Ohio River competitors. In this connection they call attention to the fact that many of the lines which concur in the rates and provisions referred to between points in southeastern territory also participate in the traffic from points in the territory here involved.

DRESSED POULTRY FOR EXPORT.

At the present time dressed poultry may be shipped in mixed carloads with fresh meat or fresh meat and packing-house products from Fort Worth to New Orleans, Mobile, Galveston, and other Gulf ports for export to Cuba. The rate charged on the dressed poultry part of the load is 77 cents per 100 pounds. It is proposed to cancel this rate, leaving the first-class rate of \$1.03 to Galveston, \$1.37 to New Orleans, and \$1.47 to Mobile to apply on less-than-carload shipments. There is no movement of these perishable commodities to Galveston for export, for the reason that the ships operating therefrom do not afford refrigeration. The present export movement from Fort Worth is through New Orleans and Mobile. No witnesses for the lines operating from Fort Worth to those ports appeared at the hearing. It was agreed, however, that whatever decision was made regarding the rates involved in No. 880 should govern those involved in No. 887.

EGGS FROM KANSAS POINTS TO EL PASO.

The present commodity rate on eggs, in carloads, from Kansas City territory to El Paso, Tex., is \$1.01 per 100 pounds, and the third-class rate which respondents propose to apply on that traffic is \$1.22

per 100 pounds. They also propose to cancel the commodity rates from other defined territories, but for the purposes of this case our consideration may be confined to the rate from Kansas City territory.

Roughly speaking, Kansas City territory includes southwestern Missouri River cities and points in Kansas on and south of the Union Pacific main line as far west as Ellsworth, Kans. The short-line distances from Kansas City, Mo., and Liberal, Kans., to El Paso, which will give some idea of the extent of Kansas City territory, are 945 miles and 535 miles, respectively.

Within the last 10 years the rate from Kansas City territory to El Paso has been increased from 93 cents to \$1.01 per 100 pounds. The rate of \$1.01 became effective August 18, 1908. While this rate applies to El Paso only, it is subject to rule 77 of our Tariff Circular 18-A, which provides that upon reasonable request rates no higher than those in effect to the next more distant point may be established on one day's notice. The fact that the rate of \$1.01 applies to El Paso only would indicate that there is no movement of eggs, in carloads, to intermediate points. In *Corporation Commission of New Mexico v. Ry. Co.*, 34 I. C. C., 292, we denied the carriers permission to continue lower rates on classes and numerous commodities to El Paso than to intermediate points, but that decision did not refer to the rate of \$1.01 on eggs in view of the facts above stated.

In *1915 Western Rate Advance Case—Part II*, 37 I. C. C., 114, 135, a proposed increase of 3 cents per 100 pounds in the rates on eggs, in carloads, from Kansas City territory and other defined territories to points in Texas, including El Paso, was denied. After the increased rate involved herein was suspended the carriers offered to compromise on a rate of \$1.07 from Kansas City territory to El Paso, which is the rate on fresh meat from Kansas City to El Paso, but this offer was rejected by the protestants, who pointed out that the rate on fresh meat from Wichita to El Paso is 74½ cents.

In support of the reasonableness of the proposed rate of \$1.22 from Kansas City territory to El Paso respondents submitted comparisons with the rates on numerous commodities moving from Kansas City to El Paso. No weight can be given to these comparisons for two reasons. First, the eggs move largely from producing points in Kansas, a very much shorter distance to El Paso than is Kansas City proper; consequently, it would be improper to compare the car-mile earnings from the rate of \$1.01 on eggs with those from the rate on commodities moving from Kansas City on the eastern edge of Kansas City territory. One shipper introduced an exhibit which shows that of 34 cars of eggs which he shipped in the course of a year on the \$1.01 rate 21 cars moved from points in Kansas west and southwest of Kansas City. Second, the rates selected for comparison with the

rate on eggs apply on such commodities as books, advertising matter, glass lamp chimneys, toys and go-carts, coffins, petroleum in tank cars, and other commodities, the circumstances and conditions surrounding the movement of which are so obviously dissimilar from those surrounding the movement of eggs that the comparisons are without probative force.

The proposed rate on eggs, in carloads, from Kansas City territory to El Paso is also compared with the rates on the same commodity from the same territory to other points in Texas and to points in other states. For example, comparison is made with the present commodity rate of 83 cents to Fort Worth, Tex., but that rate applies to all Texas common points, and consequently the car-mile earnings thereon from Kansas City to Fort Worth are not fairly representative of the car-mile earnings thereon to all Texas common points. The record contains no evidence regarding the circumstances and conditions surrounding the other rates with which comparisons are made.

The rate from Kansas City territory to El Paso on peaches in straight carloads, apples in straight carloads, and on certain dried fruits in straight or mixed carloads, is 63 cents per 100 pounds; and on apricots, cherries, grapes, and plums, in straight or mixed carloads, 95 cents per 100 pounds. These commodity rates on the commodities named are very much less than the corresponding class rates. The fresh fruits referred to move in refrigerator equipment the same as eggs.

DAIRY PRODUCTS TO MONTANA.

It is proposed to cancel the commodity rates on dairy products from Missouri River territory and other defined territories to Montana common points and to apply the third-class rates in lieu thereof. The present commodity rate from Missouri River territory is \$1.35 and the third-class rate \$1.50. As the rates from other territories are made in relation to the rate from Missouri River territory, our consideration may be confined to the Missouri River rate.

An employee of the traffic department of the Union Pacific Railroad testified that the rate on dairy products from Missouri River territory, which includes Missouri River cities, St. Paul, Minneapolis, Duluth, and intermediate points, to Montana common points, was formerly \$1.55 per 100 pounds. On July 22, 1912, the rate was reduced to \$1.35 per 100 pounds, the present rate. This reduction was made from Missouri River cities, according to the witness, to enable shippers along the Union Pacific west thereof to compete with shippers along the lines of the Northern Pacific and Great Northern railways, which lines had a more liberal concentration arrangement than did

the Union Pacific. It may be stated in this connection that the \$1.35 rate applies on some commodities on which the concentration arrangement referred to did not apply. The concentration arrangements of all lines were canceled on October 16, 1915, following our decision in the *Concentration Case, supra*, and the Union Pacific therefore takes the position that the commodity rate of \$1.35 which resulted therefrom should be eliminated.

On the other hand, the general freight agent of the Northern Pacific testified that the rate of \$1.35 was established by that line and the Great Northern to meet the action of the Union Pacific. The tariffs show that the rate became effective via the Northern Pacific and Great Northern on the same date that it became effective via the Union Pacific, namely, July 22, 1912. This witness further stated that to certain other points on the Northern Pacific the third-class rates are now applied on dairy products, and that the object of canceling the commodity rate to Montana common points is to remove a "discriminatory condition." Attention was directed to the fact that the commodity rate on dairy products from Missouri River territory to Pacific coast terminals is \$2 per 100 pounds, 20 cents per 100 pounds less than the third-class rate, but the witness was not acquainted with the facts regarding the origin or present maintenance of that rate.

Aside from the general evidence introduced to prove that third class is the proper classification rating on dairy products in carloads, respondents made no attempt to show that the proposed rates to Montana common points would be just and reasonable. Under the circumstances it is not deemed necessary to analyze the testimony and numerous exhibits presented by protestants in respect to those rates.

CONCLUSIONS.

Upon consideration of the whole record we find and conclude that respondents have not justified the proposed increased rates on dairy products, in carloads, involved in these proceedings, nor have they proved that the proper classification rating for dairy products, in carloads, is third class in western classification territory. While the rates sought to be increased are commodity rates which have been in effect for a long period of time, respondents chose to regard the issue as one of classification rating and therefore directed their justification largely to the end of showing that third class is the proper rating for dairy products in this territory. The record is almost barren of evidence showing or tending to show that the nature, value, car loading, volume of movement, method of handling, insurance risk, and other characteristics of dairy products, in car-

of Kansas City. Second,

loads, are such that dairy products should be placed in the same category with other commodities now classified third class and actually charged third-class rates. Fresh meat and certain kinds of fruit are the only commodities now classified third class as to which any showing was made in respect to the general circumstances and conditions surrounding their movement. These commodities, however, do not move on third-class rates, but on commodity rates lower than the commodity rates on dairy products. In fact, every commodity produced in large quantities in the territory in question moves to market in carloads on less than the western classification basis, and we know of no reason why an exception should be made against dairy products.

Regarding the issues raised in No. 8952, the record in this case has influenced us very strongly toward the view that in the territory involved the rates on dairy products should bear some definite relation to the rates on fresh meats. The general circumstances and conditions surrounding the physical movement of these two groups of food products are, considered as a whole, substantially similar, and the other factors usually regarded in rate making are not sufficiently dissimilar, as we now view them, to render unfeasible or improper a differential relationship of rates. The institution of such a differential relationship of rates would be far-reaching in importance, and would affect, directly or indirectly, the interests of many shippers and carriers not before us in the present proceedings. It may be added, too, that we have instituted a general investigation—

concerning the rates, rules, regulations, and practices of the carriers by railroad, governing transportation subject to the act to regulate commerce, of live stock, fresh meats, and packing-house products * * * with a view to prescribing just and reasonable rates, rules, regulations, and practices to govern such transportation and the just and reasonable relation between the rates on the said commodities or any of them.

In the light of all these considerations we are not prepared on the present record to determine just what differential relation should obtain in respect to the rates on dairy products and fresh meats. The unanimity of the opinions expressed by nearly all the traffic witnesses at the hearing suggests the possibility that the interested shippers and carriers might come to some agreement if they conferred among themselves. The parties are therefore requested to confer among themselves with that end in view and to report the result to us within 90 days from the service of this report. In the meantime, the proceeding in No. 8952 will be held open.

Orders will be entered in Nos. 880, 887, 934, and 969 requiring the cancellation of the suspended schedules.

DANIELS, *Commissioner*, dissenting:

From the conclusions reached in Investigation and Suspension Docket No. 880 I dissent for the following reasons:

First, the substitution of third-class rates would put these shipments on the prevalent basis in this general region and would eliminate the undue preference now accorded to shippers enjoying the lower commodity rates. The only carrier which discloses its relative tonnage of dairy products carried, respectively, under third-class rates and lower commodity rates was the Burlington. As shown in the majority report, for the year ended June 30, 1916, it assessed third-class rates on 5,668 cars and lower commodity rates on 1,700 cars. From points on and west of the Missouri River in Kansas and Nebraska to points on the Mississippi River, to Chicago, and to points basing on Chicago—the territory involved in this docket—the present carload commodity rates on dressed poultry, butter, butterine, and eggs are on the average 10 cents less than third class; the proposed rates are third class. To permit the suspended tariffs to go into effect would tend toward uniformity, as commodity rates on these dairy products are maintained at present over a comparatively restricted area. Dairy products generally in all classification territories move upon a class basis; and the testimony is that practically no commodity rates are in effect between Illinois points and the territory east of the Indiana-Illinois state line, and but few commodity rates exist in eastern trunk line territory.

Second, all of the transportation characteristics attaching to these commodities appear to warrant rates which should return revenue per ton-mile and per car-mile in excess of ordinary traffic; and the standard of third-class rates very generally prevalent in this same general territory would appear to be not unreasonable. Among these transportation characteristics are the relatively high price and the markedly increasing price of dairy products; the comparatively light revenue load per car which they afford; the use of refrigerator equipment for this traffic involving, as it does, a large empty return movement as well as the higher original cost and the higher current maintenance of refrigerator cars than of ordinary box cars. Moreover, the expedited refrigerator service and the relatively high percentage of loss and damage claims to total revenue combine to make an assembly of transportation conditions which, in my judgment, would warrant the third-class rates proposed.

One of the exhibits of the respondents set forth data upon the actual movement on the Chicago & North Western for the fiscal year 1914 of butter, cheese, eggs, and dressed poultry from Nebraska to Chicago and Proviso, Ill., compared to that upon the movement from South Dakota and Minnesota to the same destinations.

To Chicago and Proviso, Ill., from—	Per net ton-mile.	Per gross ton-mile. ¹	Per loaded car-mile.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Butter and cheese:			
Nebraska.....	1.77	0.54	19.53
South Dakota.....	1.75	.56	20.53
Minnesota.....	1.95	.55	19.38
Entire line.....	1.93	.59	21.61
Eggs:			
Nebraska.....	1.80	.54	19.71
South Dakota.....	1.82	.55	20.06
Minnesota.....	1.93	.59	21.55
Entire line.....	1.94	.59	21.35
Dressed poultry:			
Nebraska.....	1.73	.48	16.64
South Dakota.....	1.91	.57	20.29
Minnesota.....	1.94	.53	18.21
Entire line.....	2.01	.62	22.28

¹ Gross ton-miles used include tare 20 tons and empty movement equal to 18.87 per cent of loaded movement, which is ratio of empty to loaded movement for 1914 of C. & N. W. refrigerator cars; also include 3,000 pounds of ice.

From this table it would appear that for the average haul of eggs for 526 miles from Nebraska to Chicago, using a tare weight of 20 tons and an empty movement equal to 18.7 per cent of the loaded movement, the gross ton-mile earnings are 5.5 mills; and that from South Dakota points for the average haul of 586 miles the earnings upon the present basis appear as 5.5 mills per gross ton-mile. A comparison of the proposed rates on butter and eggs from Nebraska stations to Chicago with the present rates from equally distant southern points would also indicate that the proposed rates are properly aligned with the existing rates from other points of origin. It is true that from the southeast the prevailing system of rates is an any-quantity system; and the level of such rates would normally fall somewhere between carload and less-than-carload rates. But when due allowance is made for the any-quantity system of rates, the level of rates from the southeast to Chicago for equal mileage appears uniformly to be markedly in excess of the rates from the territory of origin here in question, and also in excess of the level of proposed rates condemned in the majority report. For example, from Hooper, Nebr., to Chicago for a distance of 517 miles, the carload rate proposed on butter and eggs is 65 cents, while from Memphis to Chicago, 477 miles, the any-quantity rates are 85 and 65 cents, respectively. The proposed rates from West Point, Nebr., to Chicago, for 537 miles, are 70 cents on butter and eggs, whereas from Batesville, Miss., to Chicago, a distance of 538 miles, the respective rates are, on butter, \$1.13, and on eggs, 94 cents.

A comparison of car-mile earnings on dairy products from representative Nebraska points on the Chicago & North Western with those on wheat, employing the average loading for 1916, 11.7 tons on dairy products and 38.4 tons on wheat, shows the charges per car on dairy products are lower than those on wheat. A compari-

son of the proposed third-class rates on dairy products from representative points to St. Louis with the present rates to Kansas City and Omaha indicate lower ton-mile earnings under the proposed rates to St. Louis than under the present rates to Kansas City and Omaha. A Rock Island exhibit showed for that system the car-mile earnings on 20 representative commodities. This exhibit was for the entire system and was based on a relative empty car haul for the various products. The car-mile earnings thus ascertained on eggs and poultry are given as 13.7 cents; and are exceeded by the car-mile earnings upon all of the other commodities compared except sugar and iron pipe. Among the other commodities compared are wheat, corn, oats, barley, vegetables, machinery, agricultural implements, and wire nails.

The loss and damage claims upon dairy products are heavy in percentage as compared with the total revenue which they afford. Numerous illustrations of this fact appear in the record. For example, on the North Western for the year ending June 30, 1916, it appears that the loss and damage claims on all carload freight were less than 1 per cent—to be exact, 0.9 per cent; whereas for the same year on eggs they amounted to 6.7 per cent, and on poultry, game, and fish 3.9 per cent. As recited by the majority report, the Burlington showed for the same year that its total claim payments on butter, eggs, and dressed poultry amounted to 4.366 per cent of the gross revenue received on these products; during the year 1914 the percentage on eggs was as high as 9 per cent. It would not appear that evidence of this character, showing the average loss involved in the handling of these commodities, is materially offset by the evidence of individual shippers who are fortunate enough not to have incurred anything beyond a trifling loss upon their particular shipments. Nor is the citation in the report of the majority of the percentage which all loss and damage claims on dairy products are of the total loss and damage claims paid upon all freight in any wise significant as indicating even remotely the transportation hazard involved in the handling of these products. It must be evident that the total loss and damage claims paid upon any particular commodity must depend very largely on the relative volume of the movement of that commodity.

Thus, if the movement of a commodity like coal or lumber comprises a large percentage of the total freight, it may possibly happen that the aggregate claims paid for loss and damage will amount to a large sum. But clearly this indicates nothing as to the relative transportation hazard in handling commodities such as coal and lumber. The reference in the majority report to an exhibit prepared from a report made to this Commission for the year ended

June 30, 1915, showing the ratio of the claims paid on particular commodities to the aggregate claims paid on all commodities is wholly devoid of any probative force as showing that the transportation hazard on dairy products is low, even if the aggregate claims paid on poultry, game, and fish, or on butter and cheese, appear to be the lowest fractions of the total paid in loss and damage claims on all freight. If the table referred to is to be taken as indicative of transportation hazard it would appear that iron and steel castings and bars are over twice as hazardous as the handling of butter and cheese, and about equally hazardous as the handling of eggs. The same table so used would result in the anomalous conclusion that the transportation hazard on products of cement, clay, and stone is several times as great as that on all dairy products combined.

43 I. C. C.

No. 7514.
FAIRMONT CREAMERY COMPANY
v.
ADAMS EXPRESS COMPANY ET AL.

Submitted June 10, 1916. Decided April 9, 1917.

Conclusion announced in previous report that Commission has no jurisdiction over joint through express rates from points in the Dominion of Canada to Buffalo, N. Y., adhered to on rehearing.

Hainer & Kraft, M. S. Hartman, and F. E. Edgerton for complainant.

T. B. Harrison, B. B. Kerfoot, W. W. Williamson, and W. H. Burr for defendants.

REPORT OF THE COMMISSION ON REHEARING.

MICCHORD, Commissioner:

In our first report of this case, Docket No. 7514, unreported, which involves the reasonableness of joint through express rates on cream from points in the Dominion of Canada to Buffalo, N. Y., we dismissed the complaint for want of jurisdiction. We said:

This case is governed by *International Paper Co. v. D. & H. Co.*, 33 I. C. C., 207, where it is said: "It is well settled by numerous decisions that the extent of our authority in connection with transportation to an adjacent foreign country is over that portion of the transportation within the confines of the United States. *Black Horse Tobacco Co. v. I. C. R. R. Co.*, 17 I. C. C., 588; *Humboldt S. S. Co. v. White Pass & Yukon Route*, 25 I. C. C., 376; *Rates on Soda Ash and Other Commodities*, 28 I. C. C., 618. * * * We can not require the maintenance of joint rates from Canada into the United States nor control the charges that carriers in Canada may make for transportation service in that country. We may require the defendants to cease and desist from continuing the joint rates complained of and establish their own rates for the service within the United States. The traffic would then move on combinations of rates. We see no occasion for doing this, nor do we see how that action could benefit these complainants."

Complainant filed a petition for rehearing, contending, among other things, that the decision of the Commission dismissing the complaint for want of jurisdiction is contrary to the purpose and intent of the act to regulate commerce, as amended, which in terms extends its provisions to property—

shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.

Our previous report asserted jurisdiction over that part of the transportation performed within the United States. The traffic involved in this case enters the United States at Buffalo, a port of entry. Buffalo is also the destination. We find nothing in the matters emphasized upon rehearing which requires a different conclusion from that reached in our original report. The complaint will therefore be dismissed.

No. 8870.

CHAMBER OF COMMERCE OF THE CITY OF
MILWAUKEE

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted September 18, 1916. Decided April 9, 1917.

Defendant's practice of absorbing switching charges at Milwaukee, Wis., on grain accorded transit at interior Wisconsin points and forwarded east via Milwaukee and lake-and-rail lines, while refusing to absorb such switching on like traffic accorded transit at Milwaukee, found to subject millers at Milwaukee to undue prejudice and disadvantage.

George A. Schroeder for complainant.

O. W. Dynes for defendant.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

The complaint made in this case is that millers at Milwaukee, Wis., are not on a parity with their competitors at interior points on the defendant's line in Wisconsin with respect to transit on grain from western points, the product of which moves east from Milwaukee via the lines of the Great Lakes Transit Corporation and its rail connections. Defendant's tariffs are alleged to be unreasonable and to subject Milwaukee millers to undue prejudice and disadvantage.

Grain originating in the west and moving to Milwaukee may be accorded transit at points on defendant's line west of Milwaukee, and the through rate from point of origin to Milwaukee will be applied to points on other roads within the switching limits of that city, including the docks of the Great Lakes Transit Corporation located

on the tracks of the Chicago & North Western Railway. However, if the grain comes all the way to Milwaukee before it is milled and the product is later switched from the mill to points on other roads within the city, the switching charge is not absorbed. This charge is 1.5 cents per 100 pounds, minimum 60,000 pounds, and, as applied to the average car of grain products, which weighs about 40,000 pounds, is equivalent to about 2 cents per 100 pounds.

This situation, so far as defendant is concerned, has existed since September, 1910, but the outbound lake lines have always absorbed the switching charge on this as well as on other traffic, and it has therefore never been borne by the shipper. About a year ago, however, the Great Lakes Transit Corporation published tariffs providing that their rates would apply only from the docks. The result is that it now costs the Milwaukee miller about 2 cents per 100 pounds more in transportation charges from point of origin to ship side at Milwaukee than the interior mills must pay for substantially the same through service, and the Milwaukee miller is deprived of the benefits of the lake-and-rail route because the cost of switching more than equals the difference between the all-rail and the rail-and-lake rates from Milwaukee. Defendant absorbs the switching charge when shipments accorded transit at Milwaukee are forwarded therefrom via all-rail or car-ferry lines.

Defendant admits that the situation, as it exists under the present tariffs, should not be permitted, but it maintains that the Great Lakes Transit Corporation should absorb the switching of the Chicago & North Western Railway.

The question, however, of what the Great Lakes Transit Corporation should do is not here before us. The Commission held in *Grain Products Rates via Great Lakes*, 43 I. C. C., 550, that the refusal of the Great Lakes Transit Corporation to absorb the switching had not been shown to be unreasonable or unduly prejudicial.

We find that defendant's practice of absorbing switching at Milwaukee on the grain accorded transit at interior points and its refusal to do so on that accorded transit at Milwaukee results in an undue prejudice to millers at Milwaukee which must be removed. An order will be entered accordingly.

No. 8578.
RICHARD MAYER COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 27, 1916. Decided April 3, 1917.

Shipments from Worcester, Mass., to Athens and Sweetwater, Tenn., found to have consisted of manufactured cotton, woolen, and jute waste, to which the fifth-class rate of 63 cents per 100 pounds was legally applicable. Complaint dismissed.

Harlan H. Ballard, jr., for complainant.

A. E. Allen for Boston & Albany Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation dealing in cotton and woolen waste, with its principal office at Boston, Mass. By complaint, filed January 5, 1916, it alleges that the any-quantity rate of 63 cents per 100 pounds charged by defendants on two shipments of unmanufactured cotton, woolen, and jute waste, in compressed bales, from Worcester, Mass., to Athens and Sweetwater, Tenn., on June 24, 1914, was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of section 4 of the act. Reparation is asked.

The shipments were consigned to woolen mills at Athens and Sweetwater and consisted of 50 and 71 machine-pressed bales, respectively, of a commodity described by complainant in the bills of lading as cotton, wool, and jute waste, unmanufactured. This description was changed by defendants to read woolen waste. Charges were originally collected on the basis of the fifth-class rate of 63 cents per 100 pounds. Neither the amount of the charges ultimately collected nor the exact weight of the shipments are disclosed. Refund to the basis of the sixth-class rate of 53 cents per 100 pounds was subsequently made to complainant on the shipment to Athens. The charges originally collected on the shipment to Sweetwater were based on a weight which was less than the actual weight of the shipment, and complainant subsequently paid charges on the additional weight at the 53-cent rate. No refund was made on the part that was charged for at the 63-cent rate. Complainant does not object to the measure of the rates, nor does it attack the ratings of the southern classification, which governed. The sole issue presented for determination is,

Was the traffic accorded the proper rating? Complainant contends that the shipments consisted of unmanufactured cotton, woolen, and jute waste, and were therefore entitled to the sixth-class rate. Defendants reply that the shipments consisted of woolen waste, and that the fifth-class rate was legally applicable.

The southern classification, in effect when the shipments moved, provided the following any-quantity ratings on waste:

Waste:	Class.
Cotton, jute or woolen, separate or combined, manufactured, in machine-pressed bales.....	5
Jute, or mixed jute and woolen, or mixed jute and cotton refuse or tailings, n. o. s.....	3
Same, in crates.....	3
Same, pressed in bales.....	6

The shipments involved consisted of a commodity mixed or blended by complainant from cheap waste, known as sweepings or card stripings, purchased from cotton, woolen, and jute mills. The mixing or blending process through which the fibers pass produces a composite product different from the waste out of which it is formed.

We find that the shipments consisted of mixed cotton, jute, and woolen waste, manufactured, and that the fifth-class rate of 63 cents per 100 pounds was legally applicable. There is therefore an outstanding undercharge on each shipment. The complaint will be dismissed.

No. 7598.
INDUSTRIAL TRAFFIC ASSOCIATION
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL

Submitted January 6, 1916. Decided April 3, 1917.

Second-class rating of chain hoists in less than carloads from Philadelphia, Pa., to points in official classification territory not shown to be unreasonable or unduly prejudicial. Complaint dismissed.

Russell C. Jones and Robert D. Jenks for complainant.

W. C. Carpenter, F. D. McKenney, and R. N. Collyer for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a traffic organization, is a corporation with its office at Philadelphia, Pa. By complaint, filed December 21, 1914, on behalf of Edwin Harrington, Son & Company and the Ford Chain Block & Manufacturing Company, of Philadelphia, hereinafter called the complainants, it is alleged that the official classification second-class rating applied by defendants on less-than-carload shipments of chain blocks from Philadelphia to points in official classification territory is unreasonable and unduly preferential.

The article shipped is known to the trade as a chain hoist, differential block, screw pulley, or chain block. It is a mechanical appliance for hoisting, operated by hand, and evolved from the ordinary pulley or tackle block, and consists of an arrangement of iron or steel pulley wheels of different sizes, around which runs a chain or a series of chains, to which are attached two strong iron or steel hooks, one at the top serving to suspend the hoist from a stationary support and the other at the end of the chains, called the hoisting hook, affording a ready means of attachment to a load. Lugs are arranged in the grooves of the wheels to prevent the slipping of the chains. Some of these wheels have various accessories and intricate attachments such as gears, ratchets, and worms which increase the lifting power of the device beyond that of the ordinary pulley blocks.

Prior to June 1, 1915, the official classification did not specifically rate chain hoists. An item in the classification, in effect from as early as 1906 to October 1, 1914, provided for the application of the second-class rating on "machinery and machines, not otherwise indexed by

name: S. u., in boxes or crates," in less than carloads. Effective October 1, 1914, the same rating was made effective on "hoists, pulley, crated or boxed," under the caption "machinery and machines." Effective June 1, 1915, subsequently to the hearing in this case, the following more specific descriptions and ratings were established and are still in effect:

	L. C. L.	C. L.
Pulley or tackle blocks, without gears, ratchets or worms, c. l., min. wt. 30,000 lbs.....	3	5
Machinery and machines:		
Pulley blocks or hoists, with gears, ratchets or worms, and chain hoists, c. l., min. wt. 30,000 lbs.....		5

During the period from 1906 to June 1, 1915, the official classification rated "pulley or tackle blocks" third class, less than carloads, and complainants contend that this rating was applicable to their shipments and in fact was applied prior to 1906. Defendants assert that the second-class rating, which was applied to complainants' shipments prior to October 1, 1914, was legally applicable because chain hoists are in fact machines or machinery, the third-class rating being applicable only on pulley or tackle blocks which did not embrace such appliances as gears, ratchets, worms, or other intricate mechanical devices for the transmission of power. We find that the second-class rating was legally applicable.

Complainants allege that defendants have applied the third-class rating to shipments of chain hoists made by their competitors. Upon the evidence of record we are unable to determine what ratings were applicable on such shipments. The carriers will be expected to ascertain and apply the ratings legally applicable.

Defendants state that there is nothing in common between pulley or tackle blocks and chain hoists; that the former are not grouped with machinery except when they possess mechanical devices for clutching the shaft, whereby they are converted into machinery or machines, and are properly rated second class under the description of pulley wheel clutches or clutch pulleys under the caption "machinery"; and that unless equipped with mechanical devices to increase their power, pulley or tackle blocks are not embraced within the term machinery, and are consequently rated third class, the same as the rope with which they are frequently associated in making up the block or tackle.

Chain hoists range in value from 14.5 cents to 40 cents per pound, and weigh from 50 pounds to 75 pounds per cubic foot. Wooden pulley or tackle blocks range in value from 4 cents to 10 cents per pound and weigh from 35 pounds upward per cubic foot. Iron or steel pulley or tackle blocks range in value from 5.6 cents to 12.7

cents per pound and weigh from 54.4 pounds to 92 pounds per cubic foot. Although chain hoists and pulley or tackle blocks serve the same general purpose, they are not strictly speaking competitive, as the former are designed and used for the elevating of loads beyond the capacity of the latter.

We find that the application of the second-class rating to the transportation of chain hoists in less than carloads from Philadelphia to points in official classification territory has not been shown to be unreasonable or unduly prejudicial. An order dismissing the complaint will be entered.

No. 8526.

L. NATENSHON & COMPANY ET AL.

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY.

Submitted June 2, 1916. Decided April 3, 1917.

Rate on green salted hides and pelts shipped subsequently to July 1, 1914, from La Crosse, Wis., to Chicago, Ill., found to have been unreasonable to the extent that it exceeded the rate contemporaneously in effect on packing-house products from and to the same points. Reparation awarded.

S. J. Bolton and W. W. West for complainants.

J. N. Davis and O. W. Dynes for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are Louis Natenshon, Joseph Feinberg, and Samuel Feinberg, copartners, trading under the name of L. Natenshon & Company; and Manuel Rosenstein, trading under the name of La Crosse Fur & Hide Company, dealers in hides and furs at La Crosse, Wis. By complaint, filed December 13, 1915, as amended, they allege that the rate of 18 cents per 100 pounds charged by defendant on seven carloads of green salted hides and pelts shipped between February 7, 1914, and July 31, 1915, inclusive, from La Crosse to Chicago, Ill., was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation upon the basis of a rate of 16 cents per

100 pounds is asked and the establishment of a 14-cent rate for the future. Rates are stated in cents per 100 pounds.

The western classification rates the great majority of packing-house products and practically all green salted hides in carloads fifth class. The fifth-class rate from La Crosse to Chicago was and is 18 cents. Prior to July 1, 1914, defendant maintained a commodity rate of 20 cents on packing-house products and hides, in carloads, from and to the same points, but, under an alternative tariff provision the fifth-class rate of 18 cents was applied on the shipments involved. On July 1, 1914, the commodity rate on packing-house products was reduced to 16 cents. The commodity rate on hides, however, remained unchanged until May 1, 1916, when it was reduced to 16 cents, following a like reduction on February 28, 1916, in the rate from St. Paul, Minn., to Chicago, in conformity with our decision in *Bergman & Co. v. C. & N. W. Ry. Co.*, 37 I. C. C., 71. La Crosse is intermediate from St. Paul to Chicago by way of defendant's line.

The shipments consisted of hides, or hides and pelts. Three of them, aggregating 129,000 pounds, moved prior to July 1, 1914; the other four, aggregating 207,900 pounds, moved subsequently to that date, and charges were collected in the sum of \$606.42, based on the fifth-class rate of 18 cents.

Complainants observe that the rate on hides from St. Paul to Chicago is 4 cents less than the corresponding fifth-class rate, and contend that the rate on the same commodity from La Crosse to Chicago should be lower by the same amount than the applicable fifth-class rate of 18 cents. They cite by way of comparison various rates on hides in the same general territory, of which the following are illustrative:

To Chicago from—	Distance.	Rate.	Earnings per ton-mile.
	Miles.	Cents.	Mills.
La Crosse.....	281	16	11.38
Cedar Rapids, Iowa.....	219	13.5	12.33
Marshalltown, Iowa.....	288	14	9.72
Waterloo, Iowa.....	272	16	11.76
Mason City, Iowa.....	155	16	9.02

Defendant did not seriously attempt to defend the 18-cent rate assailed, its testimony being confined principally to a defense of the 16-cent rate established in May, 1916, which was compared with rates on hides from producing points in Iowa, Nebraska, Missouri, Michigan, and Minnesota, to Chicago and other points, and with rates on representative commodities from La Crosse to Chicago. Defendant averred that it has been the general practice of the carriers operat-

ing in this territory to maintain equal rates on hides and packing-house products, and that it undertook to maintain from La Crosse, St. Paul, and Winona, Minn., the same outbound rates on packing-house products for the reason that the inbound rates on live stock were made on the same basis. In *Interstate Packing Co. v. C., M. & St. P. Ry. Co.*, 41 I. C. C., 396, we found that the maintenance of a rate of 16 cents on packing-house products from Winona to Chicago, the same as from St. Paul and La Crosse, was not unreasonable.

We have repeatedly held that the rates on hides and pelts should not exceed the rates contemporaneously in effect on packing-house products, and the record herein affords no basis for a different conclusion in this case. No substantial evidence of unjust discrimination or undue prejudice was adduced.

We find that the rate charged on the four shipments moving subsequently to July 1, 1914, was and for the future will be unreasonable to the extent that it exceeded and may exceed the rate contemporaneously maintained on packing-house products, in carloads, from La Crosse to Chicago; that complainants Louis Natenshon, Joseph Feinberg, and Samuel Feinberg made these four shipments and paid and bore charges thereon at the rate herein found to have been unreasonable; that they have been damaged to the extent that the charges paid exceeded the charges that would have accrued at the rate herein found to have been reasonable; and that they are entitled to reparation in the sum of \$41.58, with interest.

An appropriate order will be entered.

43 I. C. C.

No. 9001.

FOUNDRY SUPPLY MANUFACTURERS' ASSOCIATION
v.
ANN ARBOR RAILROAD COMPANY ET AL.

INVESTIGATION AND SUSPENSION DOCKET No. 884.
CORE COMPOUND AND FOUNDRY FLOUR IN OFFICIAL
CLASSIFICATION TERRITORY.

Submitted January 15, 1917. Decided April 3, 1917.

1. Sixth-class rating applied by defendants on foundry facings in carloads between points in central freight association territory not shown to have been or to be unreasonable. Complaint dismissed.
2. Proposed increased rates on core compound and foundry flour in carloads between points in official classification territory found justified, and orders of suspension vacated.

Leo Feit for complainant and protestants.
M. B. Pierce for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

These proceedings were consolidated and will be disposed of in one report.

Complainant in No. 9001 is a voluntary association of manufacturers of foundry facings, with its principal office at Cleveland, Ohio. By complaint, filed June 26, 1916, it alleges that the sixth-class rate applied by defendants on foundry facings in carloads between points in central freight association territory is unreasonable and unjustly discriminatory, and unduly prefers manufacturers of competing core compounds and foundry flour. The establishment of reasonable rates for the future is asked.

By schedules, filed to take effect July 15, 1916, and on various dates thereafter, the respondents in No. 884 proposed to cancel their present carload commodity rates on foundry flour and core compound in official classification territory, thereby rendering applicable sixth-class rates which are higher. Upon protest by the complainant in No. 9001, and by manufacturers represented by it, the schedules were suspended until November 12, 1916, and later until May 12, 1917.

The complainant and protestants will hereinafter be designated as complainants and the defendants and respondents as respondents.

Foundry facings, foundry flour, and core compound are used for substantially the same purposes and all are commonly known as foundry facings. There are many varieties of foundry facings with as many as 100 different trade names which distinguish to some extent their adaptability or particular use in connection with the molding of iron castings. The following are some of the principal varieties and their values per ton: Sea coal facing, \$7.75; XX foundry flour, \$30; No. 0 compound, \$8; No. 1 compound, \$12; and parting compound, \$30. Sea coal facing consists of slack coal that has been ground and bolted; XX foundry flour is made of low-grade flour or low-grade rice mixed with 40 to 60 per cent of plaster of paris; No. 0 compound is powdered pitch; No. 1 compound is powdered pitch in which is mixed a small percentage of a by-product of the sulphite paper mills; and parting compound is a mixture of silicate sand, flour, and grease. The weights of the various commodities involved range from 40 pounds to 60 pounds per cubic foot, except parting compound, which weighs 75 pounds, and fire clay, which weighs 92 pounds. They are shipped in bags, sacks, kegs, casks, or barrels, in straight or mixed carloads, and move in box cars.

The official classification, since its establishment on April 1, 1887, has rated foundry facings, including foundry flour and dry core compound, in sacks, barrels, or cases, in carloads, sixth class, except from 1889 to 1907, during which time the fifth class was applied on shipments thereof in sacks. In the latter part of 1905, by exceptions to the classification, respondents established rates on foundry flour, applicable in central freight association territory, on basis of the somewhat lower rates applicable on grain products. It appears that the carriers were induced by shippers to establish these lower rates because foundry flour consists largely of low-grade flour. Subsequently, in 1910, the same basis of rates was established on dry core compound with which foundry flour competes. If the suspended schedules are allowed to take effect these exceptions will be eliminated, thereby restoring the sixth-class rating which will have the effect of making the application of this rating uniform on all foundry facings in the territory in question.

Complainants while agreeing that these commodities should take the same rating, insist that the sixth-class rating is unreasonable and that the discrimination existing by reason of the lower rates now applicable on foundry flour and dry core compound should be removed by reducing the rate on foundry facings rather than by increasing the rates on foundry flour and dry core compound, which increase they contend is not justified. They urge that 80 or 83½

per cent of sixth class is reasonable because the ingredients of which these commodities are composed are accorded the following percentages of sixth class: Bituminous coal, about 50 to 60 per cent; anthracite coal, about 80 per cent; sand, about 50 to 60 per cent; clay, 60 to 70 per cent; pitch, 80 per cent; and flour, 86 to 96 per cent. Also that respondents have given common clay commodity rates on the basis of 65 to 70 per cent of sixth class and ground clay 80 per cent of sixth class, while the classification rating on common clay is sixth class. Many other examples are cited to show that where raw materials move at 50 to 80 per cent of sixth class prepared materials composed of the same ingredients move at higher rates but at a percentage less than sixth class. Complainants concede that foundry facings should not take as low a rating as slack coal or grain products, which move in trainloads; and that foundry facings are enhanced in value by the process of preparation, and that therefore somewhat higher rates than those applicable on the raw material from which they are made are justified, but contend that there is no justification for the application of the sixth-class rating. A few of the ingredients used in the manufacture of foundry facings, such as soapstone, silicate wash, plumbago, graphite, and charcoal, are rated sixth class or higher, but complainants urge that as the percentage of these ingredients is small they should not be considered as factors in determining the reasonableness of the rating in question.

Respondents contend that the rates on foundry flour and dry core compound were ill-advised and without support in any sound principles of rate construction; that higher rates should apply on manufactured or prepared articles than on raw material; that sixth-class rates apply on many of the ingredients and therefore a rating of sixth class on the manufactured articles is, in fact, low; and that foundry facings have not been given rates higher than sixth class because many of the ingredients of which they are composed are accorded commodity rates lower than the sixth-class rates. Also that none of the rate-making elements that tend to produce low rates on coal and grain products, for example, obtain with respect to foundry facings. They observe that rates on coal and grain products are influenced by public necessity, regularity, and volume of movement and water competition which tend to reduce these rates, and that under similar circumstances the rates on foundry facings would bear the same relation to the rates on coal and grain products that the rates on ground clay, a prepared commodity, bear to the rates on common clay.

The apparent discrimination between the rates on foundry facings and on foundry flour and dry core compound would be removed if the proposed schedules are allowed to become effective. Commodi-

ties which are so nearly analogous and which are sold in competition with each other should ordinarily be rated the same.

We find that respondents have justified the proposed cancellation of commodity rates on foundry flour and core compound. We further find that complainant in No. 9001 has not shown the present sixth-class rating on foundry facings to have been or to be unreasonable. Any discrimination that may have existed will be removed by the cancellation of the commodity rates in question, and there is no showing that complainant has suffered any damage by reason of such discrimination.

Appropriate orders will be entered.

INVESTIGATION AND SUSPENSION DOCKET No. 890.
GRAIN FROM MISSOURI POINTS.

Submitted January 2, 1917. Decided April 10, 1917.

Proposed tariff changes whereby increased rates will result on grain and grain products from points in southeastern Missouri on the St. Louis, Iron Mountain & Southern Railway, by way of Cairo, Ill., and Memphis, Tenn., to certain points in Mississippi and Louisiana, found to have been justified and orders of suspension vacated.

Henry G. Herbel, Fred G. Wright, and C. C. P. Rausch for Missouri Pacific Railway and its receiver, and St. Louis, Iron Mountain & Southern Railway and its receiver.

C. B. Stafford for protestant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By schedules filed to take effect July 24, 1916, the respondents proposed to cancel their joint rates of 22 cents per 100 pounds to Jackson and Meridian, Miss., and 14 cents per 100 pounds to Natchez and Vicksburg, Miss., Baton Rouge, New Orleans, Port Chalmette, and Slidell, La., on grain and grain products from points in southeastern Missouri on the St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, by way of Cairo, Ill., and Memphis, Tenn., and the Illinois Central and Yazoo & Mississippi Valley railroads, hereinafter called the Illinois Central, thereby rendering applicable combination rates which are higher than the

present joint rates. Upon protest by the Memphis Merchants' Exchange, the schedules were suspended until May 21, 1917. Rates are stated in cents per 100 pounds.

As the protest filed and the evidence introduced were directed solely to the proposed cancellation of joint rates by way of Memphis it will be necessary to consider only those rates.

The rates sought to be canceled are the same as those applicable over other routes via which the originating carrier, the Iron Mountain, obtains longer hauls. But one result of the cancellation would be the elimination at Memphis of transit arrangements provided in connection with the present through rates, making grain so handled subject to combination rates.

The local rate of the Iron Mountain from the originating points involved to Memphis is 9 cents. The local rate of the Illinois Central from Memphis to New Orleans is 9 cents. However, the St. Louis & San Francisco Railroad, hereinafter called the Frisco, and its connections maintain a proportional rate from Memphis to New Orleans of 6 cents, which is available regardless of the origin of the inbound movement. The resulting combination, therefore, is 15 cents when the traffic is moved out of Memphis over the Frisco, and 18 cents when the movement is over the Illinois Central. No lines east of the river except the Illinois Central serve Baton Rouge, and to this point the combination rate is 18 cents. Each of the other destinations named is served from Memphis by the Frisco and its connections and by the Illinois Central, and to these destinations there exists the same difference between the combination rates and the present joint rates as are shown with respect to New Orleans rates, namely, 1 cent when the traffic moves south of Memphis over the Frisco, and 4 cents over the Illinois Central.

During certain months of the year there is an active demand in the Mississippi Valley and elsewhere for corn from southeastern Missouri, which is said to be of superior quality and is harvested at a season when other corn is not readily obtainable. It is the rates on this commodity in which protestant is particularly interested. The transit service at Memphis in which it is here chiefly concerned consists of storage, which the rules permit for a period of one year. In its behalf it is testified that the transit service is of value not only to the owners of elevators and to dealers at Memphis, but also, owing to the extensive facilities for storage at this point, to shippers in Missouri who desire to store their grain and to dealers in Mississippi Valley territory who have inadequate storage facilities where they are located; that the industries at Memphis have been built up under the present system of rates; that Mississippi Valley dealers are in competition with dealers at Little Rock, Pine Bluff, and other points

in Arkansas which enjoy transit arrangements under the joint rates; that in some instances the rates and service apply at such points, though out of line movements are necessary; and that these commodities are handled upon a very small margin and a difference of one-half cent in the rate will turn the course of traffic. It is insisted that if the proposed schedules become effective, protestant's members will be unable to compete in the Mississippi Valley markets, where Illinois Central delivery is absolutely essential in connection with domestic business, and at New Orleans in connection with European export traffic. This situation at New Orleans, protestant observes, grows out of the necessity of using the Stuyvesant elevator, which is located on the Illinois Central tracks and can not be reached when the haul into New Orleans is over the New Orleans & Northeastern Railroad, the delivering carrier from Memphis under the proportional rate of the Frisco. There is considerable conflict in the testimony with reference to this latter contention, the representative of the Iron Mountain insisting that the switching of such traffic from the New Orleans & Northeastern terminals to the Stuyvesant elevator is authorized at a charge of \$5 per car.

The Iron Mountain, which assumed the burden of proof, contends that it intended, when establishing the rates in issue, to restrict their application to the so-called southern gateways, thereby securing to itself longer hauls and correspondingly greater revenues; that the failure so to restrict the routing was due to an oversight, which the schedules under suspension proposed to correct; and justifies the proposed cancellation on the ground that the remaining available routes, which it alleges are not unreasonably long, afford to the originating carrier longer hauls to which it is entitled under section 15 of the act. This respondent serves Natchez, Miss., by the absorption of nominal transfer charges from Vidalia, La., which is directly across the river; and it directs particular attention to the one-line movement over its own rails to New Orleans and to the following routes which it desires to employ to the other destinations named, and over which it would receive a line haul to the respective junctions shown: To Vicksburg by way of Monroe, La., and the Vicksburg, Shreveport & Pacific Railway; to Jackson and Meridian by way of Monroe and the Vicksburg, Shreveport & Pacific and Alabama & Vicksburg railways; and to Baton Rouge by way of Alexandria, La., and the Louisiana Railway & Navigation Company. Taking Charleston, Mo., as a typical point of origin, the distances over these routes are the following percentages of the short-line distances by way of Memphis: To Baton Rouge, 102; to Jackson, 120; to Meridian, 116; to Natchez, 91; to New Orleans, 112; and to Vicksburg, 107. It is observed that there are bridge tolls at Memphis which must be

deducted from the joint rates and which do not entirely accrue to the Iron Mountain, as it is but part owner of the bridge used; that it has an export elevator on its own line at New Orleans; that Monroe, the junction point in the route described to Vicksburg, Jackson, and Meridian, is on this respondent's main line; and that its local rates to Memphis are no higher than those of the Frisco, which also serves southeastern Missouri. Also that substantially one-third of its freight revenue is derived from lumber moving from points south of the Arkansas River, and that it is important to it to retain to its own line as far as possible the haul on the traffic here in question in order to secure the empty cars for use in this lumber traffic.

Protestant observes that transit at Memphis is permitted on grain moving to the destinations here involved from points on the Missouri Pacific-Iron Mountain system in other sections of Missouri and from points in Kansas, Nebraska, and certain other western states. But it virtually concedes that this traffic is subject to competitive influences which do not obtain in connection with the traffic here involved.

It is clear that the maintenance of the routes which it is proposed to abandon, and which were voluntarily established on December 1, 1913, would result in short hauling the originating carrier. It is equally clear that the other routes available are not unreasonably long. Under these circumstances we could not order the establishment of the through routes and joint rates involved and, following *The Ogden Gateway Case*, 35 I. C. C., 131, we are likewise without power to prevent their cancellation.

We find that respondents have justified the proposed cancellations, and an order will be entered vacating the orders of suspension.

HALL, *Chairman*, dissents.

43 I. C. C.

No. 7077.¹
MELROSE MILLING COMPANY
v.
GREAT NORTHERN RAILWAY COMPANY.

Submitted March 10, 1915. Decided April 3, 1917.

1. Defendants' cancellation on August 14, 1912, of surplus billing not representing grain or its products actually stored in transit on their lines not found to be unreasonable, unjustly discriminatory, or unduly prejudicial.
2. Grain in carloads from various points to Melrose, Janesville, and Osakis, Minn., Huron and Watertown, S. Dak., and Lidgerwood, N. Dak., found to have been overcharged.

William Furst for complainants.

John F. Finerty for Great Northern Railway Company.

C. C. Wright and *Robert H. Widdicombe* for Chicago & North Western Railway Company.

Albert H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are firms and corporations engaged in milling grain at Melrose, Osakis, and Janesville, Minn., Huron and Watertown, S. Dak., and Lidgerwood, N. Dak. By complaints, filed June 20 and 22, and July 6, 1914, they allege that defendants' cancellation of certain transit credits on grain, shipped from various points in the northwest to their respective places of business above named, destined for designated points beyond, subjected them to the payment of unreasonable, unjustly discriminatory, and unduly prejudicial rates. Reparation is asked and the reinstatement of the canceled credits. Some of the shipments were apparently delivered more than two years prior to the filing of the complaint. Any such shipments are barred.

The shipments involved, the details of which are not fully disclosed of record, originated at various points in the northwest and

¹ The proceeding also embraces complaints in—No. 7077 (Sub-No. 1), Huron Milling Company *v.* Chicago & North Western Railway Company; No. 7077 (Sub-No. 2), Osakis Milling Company *v.* Great Northern Railway Company; No. 7077 (Sub-No. 3), W. H. Stokes Milling Company *v.* Chicago & North Western Railway Company; No. 7077 (Sub-No. 4), Lidgerwood Mill Company *v.* Minneapolis, St. Paul & Sault Ste. Marie Railway Company; No. 7077 (Sub-No. 5), Jennison Brothers & Company *v.* Chicago & North Western Railway Company; and No. 7077 (Sub-No. 6), Same *v.* Chicago & North Western Railway Company et al.

moved to the points above named to be milled in transit for points beyond, generally Minnesota Transfer, or Duluth, Minn., or Chicago, Ill. Defendants' tariffs required complainants to pay the full rate from the originating points to the final destinations when the grain was delivered at the transit points, but provided for the transportation of the milled product from the transit points to the ultimate destinations without additional charge, other than the transit charge, if any. Of the shipments here considered neither the grain nor its products moved to the designated destinations, but the same was disposed of locally or was shipped to nontransit points or to transit points other than those originally designated. In consequence complainants had to their credit surplus billing covering inbound shipments which did not represent grain or its product actually stored in their transit houses. In conformity with our supplemental report in the *Transit Case*, 24 I. C. C., 340, issued June 5, 1912, this surplus billing was canceled on August 14, 1912. In some instances the charges collected on the shipments exceeded the charges that would have accrued on basis of the local rates to the milling point. Complainants in No. 7077 and Sub-Nos. 1 and 2 ask that the canceled transit credits be reinstated or that reparation be awarded upon the basis of the difference between the through rates charged and the local rates from the points of origin to the transit points; in Sub-Nos. 3, 5, and 6 for a like refund; and in Sub-No. 4 for a like reinstatement of the canceled credits. A considerable part of the canceled credits involved in Sub-No. 4 represented grain that moved to Lidgerwood locally, and complainant claims to have been further damaged because after August 15, 1912, on shipments from Lidgerwood to Minneapolis and other points taking the same rate as Lidgerwood it was compelled to pay the local rate. Where the defendants' tariffs authorized it, refunds on the basis of the difference between the full rate charged and the local rate to the milling point from the point of origin have been actually made or proffered to the complainants. In other instances the tariffs made no such provisions, and for that reason it is contended that such a refund would be improper. We have heretofore said under circumstances such as this record discloses that the inbound shipments become localized and therefore subject to the local rate from the point of origin to the milling point. *Pillsbury Flour Mills Co. v. G. N. Ry Co.*, 39 I. C. C., 353; *Conference Ruling No. 350*. Under transit tariffs, effective August 15, 1912, complainants are required to pay the local rate upon delivery of the grain at the transit points. The balance of the through rate is not payable until the product is forwarded to final destination.

Complainants urged in support of their prayer for the reinstatement of the transit credits canceled on August 14, 1912, that under the transit arrangements which had been in effect for many years they had carried over from year to year a balance of unused transit credits; that on August 14, 1912, the date of the cancellation, very little grain or flour was on hand, the wheat season commencing about September 1; and that the notice that all billing which did not represent grain or its products on hand was to be canceled was insufficient to enable complainants to ship an equivalent tonnage to the transit points. The answer to these contentions is that the defendants' course in this matter was in accordance with our report in the *Transit Case*, *supra*, wherein we condemned the very practice here contended for and required the carriers to cancel at the close of each day all billing not representing grain actually on hand. Complainants appear to base their contention that they should be allowed to substitute other tonnage for that represented by the canceled credits upon the withdrawal in our final report in the *Transit Case*, 26 I. C. C., 204, of orders and requirements previously promulgated, which action is construed by them as an admission that our former requirements with respect to the cancellation of surplus billing were erroneous. This contention was considered and disposed of in our report in *National Casket Co. v. S. Ry. Co.*, 31 I. C. C., 678, in which we said, at pages 687-688:

There is no warrant for assuming * * * that we have receded in any degree from the opinions hitherto expressed, touching the unlawfulness of any practice or device not authorized by the tariff by which the integrity of a through rate is impaired; unjust discrimination or undue preference is given or secured; or the requirements of the law or the tariff are in any wise evaded. The law is as binding upon the shippers and the carriers as it was before we rescinded rule 76 and withdrew our suggestions. The obligation to preserve its letter and spirit rests no less lightly upon all parties subject to its provisions. The penalties for its violation are unchanged. It is now, as it was then, the duty of the carriers to initiate and properly police their transit arrangements. It is now, as it was then, the duty of the shipper to conform his operations to the requirements of the law and of all reasonable rules and regulations of the carrier designed to insure the observance of the law.

No evidence was adduced in support of the allegations of unjust discrimination or undue prejudice.

We find that the cancellation by defendants on August 14, 1912, of transit credits that did not represent grain or its products actually on hand is not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial. We further find that the shipments in question were overcharged to the extent that the charges paid on the canceled tonnage exceeded those accruing on basis of the local rate to the milling point; that complainants made the said shipments

and paid the charges thereon; that they have been damaged in the amounts of the above-mentioned overcharges; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record and complainants should prepare statements showing as to each shipment upon which reparation is claimed, the date of delivery, car initials and number, points of origin and destination, milling point at which stopped, route, commodity, weight, rate applied, charges collected, rate applicable to the milling point, and the amount of reparation payable upon the basis of the findings herein. These statements should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

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No. 8509.
S. OBERMAYER COMPANY
v.
PENNSYLVANIA COMPANY ET AL.

Submitted May 18, 1916. Decided April 10, 1917.

Rate charged on ground bituminous coal in carloads from Rillton, Pa., to Chicago, Ill., not shown to have been or to be unreasonable or otherwise illegal. Complaint dismissed.

B. Robeson for complainant.

George Stuart Patterson for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of foundry supplies with its principal office at Chicago, Ill. By complaint, filed December 9, 1915, it alleges that the sixth-class rate of 15.8 cents per 100 pounds charged by defendants on ground bituminous coal, in carloads, from Rillton, Pa., to Chicago, is illegal, unreasonable, and unjustly discriminatory. Reparation is asked and the establishment of a reasonable rate for the future.

The commodity involved, known to the trade as sea coal foundry facing, consists of bituminous coal which is ground to measured grades of fineness ranging from a powder or dust to a coarse meal, with which other ingredients are sometimes mixed. When shipped it is packed in paper or burlap bags, each of which contains from 60 to 100 pounds, and moves in box cars in carloads. The slack coal from which it is manufactured is valued at the mine at about \$1.10 per long ton, the value of the product manufactured by complainant being from \$3.50 to \$5.50 per net ton.

Complainant contends that ground bituminous coal is entitled to the commodity rate of \$1.90 per net ton which is applicable on bituminous coal between the points in question.

Complainant's mill at Rillton has been in operation for about 10 years, and since August 1, 1907, the sixth-class rating has applied on ground coal in bags, in official classification territory. Prior to November, 1913, complainant described its shipments as ground coal, but since that date defendants have required that they be described as foundry facings.

Defendants assert that ground coal is a manufactured commodity and is sold as foundry facings; that its value is from 3½ to 5 times higher than slack coal screenings from which it is manufactured; that it moves only in box cars; and that it does not compete with coal as a fuel, nor does coal compete with it as foundry facings. Defendants show that complainant's shipments average approximately 49,000 pounds per car, and move in cars with an average loading capacity of about 78,000 pounds, the average earnings thereon from Rillton to Chicago, a distance of 493 miles, being \$77.72 per car. The average loading of defendants' westbound bituminous coal is approximately 99,000 pounds, which is practically the maximum capacity of the cars used, and the earnings thereon from Rillton to Chicago average \$94.09 per car. The sixth-class rate applicable on ground coal, based on the average loading of complainant's shipments, produces earnings of 6.4 mills per ton-mile and 15.7 cents per car-mile. The commodity rate of \$1.90 per net ton applicable on bituminous coal yields 3.84 mills per ton-mile and 19 cents per car-mile, based on the average loading of 99,000 pounds. If the commodity rate of \$1.90 per net ton were applied on complainant's shipments of ground coal the earnings thereon would be \$46.55 per car and 9.4 cents per car-mile. Ground coal in carloads is rated sixth class, minimum 36,000 pounds, in southern classification, and class D, minimum 36,000 pounds, in western classification. The sixth-class rate, minimum 36,000 pounds, has been applicable on ground coal in barrels, kegs, or casks in official classification territory continuously since 1903. Prior to 1907 the fifth-class rate applied on ground coal in bags. Defendants assert that no complaint has been made heretofore against these ratings. The fact that a classification has long existed and is accorded wide recognition is persuasive of its reasonableness. *Underwood Veneer Co. v. A. A. R. R. Co.*, 32 I. C. C., 265.

Complainant cites a rate of 80 per cent of sixth class applicable on coal briquettes and boulets, and rates on dry core compound, which are less than sixth class, applicable in central freight association territory. Defendants answer that the demand for coal briquettes and boulets is limited, and that they are sold in competition with, and at practically the same price as, the particular coal from which they are manufactured. In *Foundry Supply Mfrs. Asso. v. A. A. R. R. Co.*, 43 I. C. C., 734, we found that the sixth-class rating applicable on foundry facings, including ground coal, had not been shown to have been or to be unreasonable. In *Core Compound and Foundry Flour in Official Classification Territory*, which was disposed of in the same report, we found that defendants herein and other carriers operating in central freight association territory had justified an increase in the rates on dry core compound from less than sixth class to sixth class.

We find that the sixth-class rating was and is legally applicable on the ground coal in controversy, and that the rate assailed is not shown to have been or to be unreasonable. Any discrimination that may have existed by reason of the lower commodity rates contemporaneously maintained on dry core compound will be removed following our decision in *Core Compound and Foundry Flour in Official Classification Territory, supra*, and there is no showing that complainant has been damaged by reason of such discrimination.

An order dismissing the complaint will be entered.

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No. 7828.

KNOXVILLE IRON COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILROAD
COMPANY ET AL.

Submitted October 9, 1916. Decided April 10, 1917.

Charges collected on a carload of iron ore from Chalybeate Springs, Ga., to Knoxville, Tenn., found to have been unreasonable. Reparation awarded.

E. D. Attix for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of bar iron at Knoxville, Tenn. By complaint, filed March 10, 1915, it alleges that the charges collected by defendants for the transportation of a carload of iron ore from Chalybeate Springs, Ga., to Knoxville, October 3, 1911, were unreasonable. The claim was presented to the Commission informally September 24, 1913. Reparation is asked. Rates are stated in dollars and cents per long ton unless otherwise specified.

The shipment weighed 43,700 pounds and moved as routed by the shipper: Atlanta, Birmingham & Atlantic Railroad to Atlanta, Ga., and the Southern Railway thence to Knoxville. No joint rates were in effect over the route of movement. Charges were ultimately collected in the sum of \$62.08, based on the following combination,

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which was legally applicable: \$7.20 per car of 25,000 pounds, excess in proportion, Chalybeate Springs to Atlanta; \$6 per car of 25,000 pounds, excess in proportion, Atlanta to Aragon, Ga.; 40 cents per ton, minimum 30 tons, Aragon to Anniston, Ala.; and 90 cents per ton, minimum 30 tons, Anniston to Knoxville. Approximately this rate was equivalent to \$3.18 per ton. A rate of \$1.60, minimum 20 tons, was contemporaneously maintained from Chalybeate Springs and contiguous points on the Atlanta, Birmingham & Atlantic, including Manchester and Woodland, Ga., to Knoxville, by way of the Atlanta, Birmingham & Atlantic and the Louisville & Nashville Railroad. The distance over the latter route was 275 miles; over the route of movement, 303 miles. Effective August 8, 1912, after the shipment moved, the \$1.60 rate was established over the route of movement. At the time of movement the Southern Railway maintained rates on iron ore to Knoxville from Spring Garden, Ala., of 70 cents, from Cave Springs and Seney, Ga., of 85 cents, and from Prior, Ga., of 90 cents, for distances ranging from 164 to 184 miles. Defendants expressed willingness on our informal docket to make reparation on basis of the subsequently established rate of \$1.60, admitting that the rate charged was unreasonable.

We find that the charges collected were unreasonable to the extent that they exceeded the charges that would have accrued on basis of the subsequently established rate of \$1.60; that complainant made the shipment as described and paid and bore charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the charges collected and the charges that would have accrued on basis of the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$30.08, with interest.

An order awarding reparation will be entered, but as the \$1.60 rate has been in effect for more than two years no order for the future is necessary.

No. 6955.

G. I. MOORE

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 3241.

Submitted June 8, 1916. Decided April 10, 1917.

1. Former finding that the rate on coal from southern Illinois mines to Hazel Spur, Mo., was not shown to be unreasonable or otherwise in violation of the act, and denial of the application of the Chicago & Eastern Illinois Railroad Company to continue rates on coal from these mines to Chaffee and Cape Girardeau, Mo., lower than the rates contemporaneously applicable on like traffic to Illmo, Mo., and other intermediate points, affirmed on rehearing.
2. Rates from the same mines to Illmo, Rockview, Mo., Chaffee, and Cape Girardeau not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial.

James A. Finch for complainant.

George B. Webster for interveners.

Edw. A. Haid and *A. L. Burford* for St. Louis Southwestern Railway Company.

Thomas Bond, *A. P. Humburg*, and *C. B. Cardy* for St. Louis & San Francisco Railroad Company and its receivers; Chicago & Eastern Illinois Railroad Company and its receiver; and Illinois Central Railroad Company.

REPORT OF THE COMMISSION ON REHEARING.

BY THE COMMISSION:

This case was originally decided October 20, 1915. The complaint, filed May 28, 1914, alleged that the rates on coal in carloads from Marion, West Frankfort, Herrin, Benton, Marissa, De Soto, Tamaroa, and Du Quoin, Ill., to Hazel Spur, within the corporate limits of Illmo, Mo., were unreasonable and unduly prejudicial in that they exceeded rates from the same points of origin to Chaffee and Cape Girardeau, Mo., more distant points. We found that the rates were not shown to be unreasonable or otherwise violative of the act. In the same proceeding the application of the Chicago & Eastern Illinois Railroad, hereinafter called the Chicago & Eastern Illinois, for authority to continue rates on coal from points on its line in southern

Illinois to Chaffee and Cape Girardeau which were lower than the rates contemporaneously maintained to Illmo and other intermediate points was denied.

In the original report we said:

The mines are in southern Illinois, on the Chicago & Eastern Illinois Railroad, in the so-called Marion group, and on the Illinois Central Railroad, in Illinois Central group 3. Complainant's coal moves via these lines to Thebes, Ill.; Chicago & Eastern Illinois from Thebes west through Illmo and Rockview, Mo., and then south to Chaffee yard; St. Louis & San Francisco, hereinafter called the Frisco, north to Rockview and northeast through Gulf Junction to Cape Girardeau; Frisco back through Gulf Junction south to Hazel Spur within the city limits of Illmo. Illmo is a station on the St. Louis Southwestern Railway, hereinafter called the Cotton Belt. The Chicago & Eastern Illinois operates through Illmo to Rockview over the rails of the Cotton Belt, and from Rockview to Chaffee yard over the rails of the Frisco. Its trackage agreement with the Cotton Belt forbids it to handle traffic for Illmo, Rockview, or intermediate points.

The St. Louis Southwestern Railway, hereinafter called the Cotton Belt, was not a party to the original proceeding. On December 21, 1915, we rescinded the orders previously entered herein, reopened the proceedings, and made the Cotton Belt a party defendant. At the same time and on our own motion we instituted an investigation as to the relationship of rates on coal, in carloads, from the points in question to Hazel Spur, Illmo, Rockview, Chaffee, and Cape Girardeau, and as to whether the rates to those destinations are unreasonable, unjustly discriminatory, unduly prejudicial, or involve departures from the provisions of the fourth section of the act. Subsequently the Cape Girardeau Commercial Club, the Missouri Public Utilities Company, and several industries at Cape Girardeau intervened and adduced evidence assailing the rates to that point. Rates are stated in amounts per ton.

When the complaint was filed the rates from the mines involved were: 60 cents to Chaffee and Cape Girardeau; 90 cents to Illmo and Hazel Spur; and 95 cents to Rockview. No changes have been made in the rates to Illmo, Rockview, or Hazel Spur, but on September 30, 1915, the rates to Chaffee and Cape Girardeau were increased to 75 cents.

With respect to the fourth section feature we said in our former report:

Defendant Chicago & Eastern Illinois contends that it does not violate the long-and-short-haul rule of the fourth section by reason of the higher rates that apply to Illmo than to Chaffee and Cape Girardeau, because it can not handle traffic to Illmo and Rockview and intermediate points. It appears, however, that the Chicago & Eastern Illinois publishes the rate applicable to Illmo, with the concurrence of the Cotton Belt. Since the Chicago & Eastern Illinois also publishes the lower rate to Chaffee and participates in the lower

rate to Cape Girardeau, the adjustment violates the long-and-short-haul rule of section 4. The fourth section relief asked will be denied.

The Cotton Belt, in turn, insists that it participates only in the joint rates to Illmo and Rockview, and that, therefore, there is on its part no infraction of the fourth section. But an examination of the tariff involved discloses that the concurrence of that carrier covers all the rates in issue. The adjustment contravenes the long-and-short-haul rule of that section and must be corrected in the absence of proof of a special case entitling the carriers to relief under their application. Immediately prior to December 21, 1910, the rates were 75 cents to Chaffee, 90 cents to Cape Girardeau, and \$1 to Illmo, Rockview, and Hazel Spur. On that date the rates from the Chicago & Eastern Illinois mines to Cape Girardeau were reduced to 60 cents, to be maintained for a period of 30 years, under an agreement between that city and the Frisco in settlement of a controversy between them, and equal rates were subsequently applied to Chaffee. Rates from the Illinois Central mines to Cape Girardeau were also reduced to the same basis, and in February, 1916, joint rates from those mines to Chaffee were canceled. The rates from all of the mines involved to Cape Girardeau, and the rates from the Chicago & Eastern Illinois mines to Chaffee, have since been increased to 75 cents. As stated, the present rates to Illmo and Hazel Spur are 90 cents, and to Rockview, 95 cents. We find in the record, in respect of this situation, no basis for fourth section relief.

No additional testimony was offered by the complainant on rehearing. The interveners have a general interest in the rates to this territory, but are primarily interested in the rates to Cape Girardeau. They ask for the restoration to Cape Girardeau of the former rate of 60 cents. They observe that defendants maintain rates of 90 cents from Marion to Valley Park and Southeastern Junction, Mo., distances of 255 and 247 miles, respectively, and a rate of 80½ cents, formerly 65 cents, from certain of these mines to Crystal City, Mo., 181 miles. The latter rate applies by way of Cape Girardeau. Defendants explain that Valley Park and Southeastern Junction are within approximately 25 miles of the Belleville group of mines, that the rates from the Belleville group to the three points referred to are made on the St. Louis combination, and that such of defendants as maintain rates from the mines in question to those points meet the rates established from the Belleville group. Also that they were authorized to maintain lower rates to Crystal City than to intermediate points by our Fourth Section Order No. 1480. Intervenors rely principally upon the alleged agreement with the city of Cape Girardeau and upon exhibits showing numerous rates on coal which yield ton-mile earnings less than the ton-mile earn-

ings yielded by the rate to Cape Girardeau. But the rates cited apply generally in other territories and for distances in excess of those involved in this proceeding.

The mileage to Cape Girardeau employed by interveners is 90 miles and is figured from Marion. Defendants observe that Marion is the nearest of the grouped points to Cape Girardeau, and that the average distance from the Chicago & Eastern Illinois mines is 98 miles; from mines on the Illinois Central Railroad, 107 miles. The major portion of the haul involved is in the state of Illinois; and defendants show that the rates on soft coal formerly prescribed by the Railroad and Warehouse Commission of that state for a one-line haul were 85 cents for 75 miles, 88 cents for 90 miles, and 90 cents for 100 miles; that the movement here in question is generally a two or three line haul and involves a bridge crossing; and that rates from these mines to numerous other points in the immediate vicinity of Cape Girardeau are upon a higher basis than any of the rates now under consideration. Defendants are now seeking authority from the State Public Utilities Commission of Illinois to increase to 65 cents the intrastate rate of 60 cents now applicable to Thebes, Ill. They refer to *Indiana and Illinois Coal*, 40 I. C. C., 603, wherein they were permitted to increase the coal rates from Illinois mines to destinations in certain other states, and to the *1915 Western Rate Advance Case*, 35 I. C. C., 497, 603, wherein we approved increases in the rates on bituminous coal in the territory here involved.

No evidence was adduced on rehearing which would warrant any change in our original findings with respect to the rate to Hazel Spur, or the fourth section relief asked, and they are accordingly affirmed. We further find that the rates to Illmo, Rockview, Chaffee, and Cape Girardeau are not shown to be unreasonable, unjustly discriminatory, or unduly prejudicial.

Appropriate orders will be entered.

No. 8363.

JAMES CRAWFORD

v.

TEXAS & PACIFIC RAILWAY COMPANY ET AL.

PORTION OF FOURTH SECTION APPLICATION No. 466.

Submitted June 22, 1916. Decided April 10, 1917.

1. Rates on pine ties from Paxton, Lamont, Sacul, Trawick, Nivac, Thoms, Splendora, Shawnee, and Huntington, Tex., to El Paso, Tex., destined to Pearson, Mexico, found unreasonable to the extent that they exceeded the rates contemporaneously applicable to pine lumber from and to the same points. Reparation awarded.

2. Fourth section relief denied.

Rufus B. Daniel for complainant.

C. W. Brosius for Texas & Pacific Railway Company.

E. H. Thornton for Texas & New Orleans Railroad Company and Houston East & West Texas Railway Company.

Fred H. Wood and Baker, Botts, Parker & Garwood for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of El Paso, Tex. By complaint, filed September 27, 1915, he alleges that the rates charged by defendants for the transportation to El Paso, Tex., of 12 carloads of pine ties shipped from Paxton, Lamont, Sacul, Trawick, Nivac, Thoms, Splendora, Shawnee, and Huntington, Tex., destined to Pearson, Mexico, between March 6 and April 1, 1913, inclusive, were unreasonable and in violation of the long-and-short-haul rule of the fourth section. Reparation is asked. The claim was presented to the Commission informally February 16, 1915. Rates are stated in cents per 100 pounds.

The points of origin are on the Texas & New Orleans Railroad and the Houston East & West Texas Railway in the eastern portion of Texas. The shipments moved in accordance with shipper's routing instructions over the Texas & New Orleans or Houston East & West Texas and Texas & New Orleans to Dallas, Tex., and the Texas & Pacific Railway thence to El Paso, where they were delivered to the El Paso Southern Railway for delivery in Mexico. No joint rates were in effect from the points of origin to Pearson, and charges up

to El Paso were assessed at rates of 25 cents on some of the shipments and 34 cents on others. The rates legally applicable were the class D rates of 34 cents. Apparently certain of the shipments were undercharged.

Rates of 18 cents were contemporaneously applicable over the routes traversed on pine lumber from the points of origin in question to El Paso, destined to Pearson. Defendants stated that these rates were made applicable over the routes of movement in error. They were established November 24, 1912, and were increased to 21½ cents on June 18, 1915. The latter rates have since been applicable over these routes to both pine lumber and ties.

We have repeatedly held that the rates on crossties between given points should not exceed the rates contemporaneously in effect on lumber of the kind of wood from which the crossties are made.

We find that the rates assailed were unreasonable to the extent that they exceeded the rates contemporaneously applicable on pine lumber from and to the same points; that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found to have been unreasonable; that he was damaged thereby to the extent of the difference between the charges paid and those that would have accrued at the rates herein found to have been reasonable; and that he is entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we will consider the entry of an order awarding reparation. The undercharges mentioned may be waived. As the present rates on pine crossties from and to the points involved do not exceed the rates on pine lumber, no order for the future is necessary.

That portion of Fourth Section Application No. 466, of F. A. Leland, agent, in which authority is sought to continue higher rates on pine ties from the points of origin to El Paso, when destined to Pearson, than from more distant points in Texas and Louisiana, to which the points in question are intermediate, was set for hearing with the complaint. Defendants did not attempt to justify the departures from the provisions of the fourth section of the act, but stated that the rates in issue now conform to the requirements of that section. The application will be denied to the extent that it is involved.

An appropriate order will be entered.

No. 8319.
SOUTH OMAHA LIVE STOCK EXCHANGE
v.
CHICAGO GREAT WESTERN RAILROAD COMPANY
ET AL.

Submitted February 2, 1916. Decided April 10, 1917.

Charges assessed by defendants for cleaning and disinfecting cars used in the transportation of live stock between Omaha and various points without the state of Nebraska found legally applicable. Complaint dismissed.

A. F. Stryker for complainant.

G. A. Kelly, O. W. Dynes, C. C. Wright, W. F. Dickinson, R. V. Fletcher, H. G. Herbel, F. G. Wright, H. A. Scandrett, N. S. Brown, and R. B. Scott for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION.

Complainant is a voluntary association of live-stock dealers, with its principal office at Omaha, Nebr. By complaint, filed September 13, 1915, as amended, it alleges that the charges collected by defendants for cleaning and disinfecting cars used in the transportation of live stock between Omaha and various points without the state of Nebraska, during the period from June 1, 1915, to July 15, 1915, inclusive, were unlawful. Reparation is asked. The Sioux City Live Stock Exchange intervened on behalf of live-stock traders at Sioux City, Iowa, but did not appear at the hearing.

The following is illustrative of defendants' tariff rules under which the charges assailed were collected:

Cleaning and disinfecting stock cars, charges for.—The published tariff rates of the carriers, parties to this circular as amended, for the transportation of live stock do not include the expense of disinfecting cars made necessary by federal, state, county, or municipal regulations concerning the transportation of diseased, exposed, or infected live stock.

When such regulations require cars which have been used in the transportation of live stock to be cleaned or disinfected, the following charges for such service will be assessed against the shipment on account of which such cleaning or disinfecting service is performed:

For each single deck car.....	\$2. 50
For each double deck car.....	4. 00

Defendants' tariff rules have been revised since the hearing by the elimination of the words "concerning the transportation of diseased, exposed, or infected live stock."

The following regulations of the United States Department of Agriculture required the cleaning and disinfecting of the cars used in the transportation of the shipments in question, which were described by the shippers as "feeders" and so billed:

In order to prevent the introduction or dissemination of the contagion of a contagious, communicable disease known as foot-and-mouth disease * * * no cattle, sheep, other ruminants, or swine shall be transported or otherwise moved from one state or territory of the United States, or the District of Columbia, into or through any other state or territory of the United States, or the District of Columbia, for feeding, breeding, stocking, or dairy purposes, unless the cars or other vehicles in which the animals are loaded for interstate shipment are first cleaned of all loose litter and other material and disinfected with one of the following substances: * * *.

It is further ordered that the transportation companies, before accepting or moving an interstate shipment of cattle, sheep, other ruminants, or swine, shall secure a signed statement from each owner or consignor of such cattle, sheep, other ruminants, or swine showing the specific purpose for which the animals are shipped, and in every such case said statement shall accompany the waybills. * * *.

Apparently some of the shipments listed in complainant's exhibits on which no reparation is asked, were not described as "feeders," while other shipments originated on lines of some of the defendants whose tariffs did not provide for a cleaning and disinfecting charge. In all such instances where overcharges exist defendants expressed willingness to make the proper refunds without an order.

It is conceded that the live stock involved was clean, and complainant contends therefore that the charge in question was not applicable to its shipments as the tariff rules limited the application of such charge to cars used for the transportation of "diseased, exposed, or infected live stock." Defendants reply that the words "regulations concerning the transportation of diseased, exposed, or infected live stock" were intended to designate the general character of the regulations prescribed for the purpose of preventing the spread of disease among cattle.

We find that complainant's contention is not well founded and that defendants' tariffs provided for the assessment of this charge when the service is necessary by reason of federal, state, county, or municipal regulations. It follows that the charges assessed were legally applicable, and the complaint will be dismissed.

No. 8550.
GULF REFINING COMPANY
v.
**ST. LOUIS, SAN FRANCISCO & TEXAS RAILWAY
COMPANY ET AL.**

Submitted April 26, 1916. Decided April 10, 1917.

1. Claim for reparation on certain carloads of gasoline and naphtha from North Fort Worth, Tex., to Kiefer, Okla., found to have been abandoned.
2. Rate on certain carloads of naphtha from North Fort Worth to Kiefer found to have been unreasonable. Reparation awarded.

C. B. Ellis for complainant.

R. B. Merrick for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant is a corporation engaged in refining and marketing petroleum and its products, with its principal office at Pittsburgh, Pa. By complaint, filed December 20, 1915, it alleges that the rates charged by defendants on 47 carloads of gasoline and naphtha, shipped from North Fort Worth, Tex., to Kiefer, Okla., during the period from April 19, 1913, to January 24, 1914, inclusive, were unreasonable to the extent that they exceeded 32 cents per 100 pounds, the rate subsequently established. Reparation is asked. Rates are stated in cents per 100 pounds.

The claim was presented to the Commission informally on August 29, 1914. On May 6, 1915, complainant was advised that the claim could not be informally adjusted, but failed to file a formal complaint thereafter until December 20, 1915. As the formal complaint was not filed within six months after notice that the claim could not be adjusted informally, the claim for reparation on all shipments not delivered at Kiefer within two years prior to December 20, 1915, must be held to have been abandoned. *Rule III of Rules of Practice; Newport Mining Co. v. C. & N. W. Ry. Co.*, 41 I. C. C., 465. Several of the shipments were forwarded just prior to December 20, 1913, and may or may not have been delivered at destination on or before that date.

The shipments hereinafter considered, consisting of naphtha in tank cars loaded to the capacity of the tank, moved by way of de-

fendants' lines. A carload minimum weight, based on an estimated weight of 6.6 pounds per gallon and the marked gallonage capacity of the tank, applied in connection with each of the rates referred to herein. Charges were collected on shipments forwarded before December 20, 1913, at a rate of 47 cents, defendants' fifth-class distance rate, applicable for a distance of 300.1 miles. The rate legally applicable at that time was 45 cents, the fifth-class distance rate for 299.5 miles, 97.5 miles to Sherman, Tex., and 202 miles beyond. Effective December 20, 1913, defendants' distance schedule reduced the distance to 292.9 miles. Those shipments, if any, which were forwarded before but delivered after December 20, 1913, were overcharged 2 cents per 100 pounds. On the other shipments, forwarded between December 20, 1913, and January 25, 1914, inclusive, charges were collected on the basis of the fifth-class rate of 45 cents, legally applicable.

When the shipments moved and at the present time a commodity known as casing-head gas was produced at Kiefer. At complainant's refinery at North Fort Worth naphtha was produced for which there was no market, and complainant conceived the idea of shipping this naphtha to Kiefer for blending with the casing-head gas. After experiments had demonstrated the feasibility of the plan, the shipments in question were transported to Kiefer, where the two commodities were blended, and the product subsequently reshipped. It is argued that the shipment of naphtha into Kiefer and its mixture with casing-head gas results in additional movement over defendants' lines of the blended commodity, as there is no local use for naphtha at Kiefer.

Petroleum and its products move generally in this territory at commodity rates lower than class rates. During the period of movement a commodity rate of 32 cents applied on petroleum and petroleum products in tank cars from North Fort Worth to Tulsa, Okla., by way of the Missouri, Kansas & Texas lines, about 305 miles. Tulsa, which is also served by the St. Louis-San Francisco Railway, is about 18 miles farther distant from North Fort Worth than is Kiefer by way of defendants' lines. Prior to the movement of the shipments defendants at the request of complainant had agreed to publish a 32-cent rate from North Fort Worth to Kiefer, but difficulties were encountered in getting out the tariffs and that rate did not become effective until January 26, 1914.

Based on 52,777 pounds, the average weight of the shipments, the 45-cent rate charged yielded \$287.50 per car, approximately 81 cents per car-mile and 3 cents per ton-mile. Defendants admit that the rates charged were unreasonable, and express willingness to

make reparation on the basis of the 32-cent rate. The 32-cent rate yields about 2.1 cents per ton-mile and, based on the average weight above shown, about 58 cents per car-mile. This rate, which is still in effect, is not assailed.

We find that the rate of 45 cents per 100 pounds legally applicable on the shipments in question was unreasonable to the extent that it exceeded the rate of 32 cents per 100 pounds now in effect; that complainant made the shipments as described and paid and bore the charges thereon; and that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate of 32 cents per 100 pounds subsequently established; and is entitled to reparation, with interest, on the shipments not barred by the statute of limitation. The exact amount of reparation due can not be determined upon the present record. Complainant should prepare a statement showing the details of the shipments in accordance with rule V of the Rules of Practice, which statement should be submitted to defendants for verification. Upon receipt of a statement so prepared and verified we shall consider the entry of an order awarding reparation.

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CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

8204. NATIONAL CONFECTIONERS' ASSO. OF THE UNITED STATES *v.* ADAMS EXPRESS CO. ET AL. Classification of candy and confectionery throughout the United States. *T. E. Lannen* for complainant. *T. B. Harrison, J. Pullen, C. Donnelly, W. H. Burr, W. C. Muir, J. F. Finerty, E. M. Williams,* and *B. P. Kerfoot* for defendants. Complaint satisfied. Dismissed March 29, 1917.

8411. ARMOUR & CO. *v.* AMERICAN EXPRESS CO. Rates on fresh meats from Chicago, Ill., to Boston, Mass. *C. J. Faulkner, jr.,* and *H. K. Crafts* for complainant. No appearance for defendant. Transferred to special docket for adjustment, February 5, 1917.

8428. NEW ALBANY BOX & BASKET CO. *v.* I. C. R. R. CO. ET AL. Rates on logs from Kentucky, Alabama, and Tennessee to New Albany, Ind. *J. V. Norman* and *B. A. Word* for complainant. *F. W. Gwathmey* and *J. Hattendorf* for defendant. Dismissed on request of complainant, March 12, 1917.

8669. LA CROSSE SHIPPERS' ASSO. ET AL. *v.* M. C. R. R. CO. ET AL. Rates on grapes from Baroda, Vineland, and St. Joseph, Mich., and Fredonia and Irving, N. Y., to La Crosse, Wis. *S. J. Bolton* and *W. W. West* for complainants. *K. F. Burgess* and *G. P. Lyman* for Chicago, Burlington and Quincy R. R. Co. Dismissed upon motion of complainants, February 13, 1917.

8698. FORESTER LUMBER CO. *v.* S. RY. CO. ET AL. Rates on lumber from Kershaw, S. C., to Etnaus, Pa. *J. R. Walker* for complainant. *C. Heebner, F. L. Ballard, H. W. Bicklé, G. S. Patterson,* and *C. B. Northrup* for defendants. Dismissed on request of complainant, February 13, 1917.

8704. UNION HAY CO. *v.* C., ST. P., M. & O. RY. CO. ET AL. Rates on hay from Augusta, Wis., to Elroy, Wis., reconsigned to Lincoln, Ill., and reconsigned from that point to St. Louis, Mo. *Thomas, McCune & Wunderman* for complainant. *R. L. Kennedy, C. C. Wright* and *R. H. Widdicombe* for defendants. Complaint satisfied. Dismissed April 9, 1917.

8741. NORTHWESTERN LIQUOR ASSO. *v.* P. T. RY. CO. ET AL. Rates on distilled spirits from Louisville, Ky., to Boise City, Idaho. *H. Quinn* for complainant. No appearances for defendants. Dismissed on request of complainant, February 13, 1917.

8782. SWEETS STEEL CO. *v.* P. R. R. CO. Rates on steel rails from Williamsport, Pa., to Buffalo, N. Y. No appearance for complainant. *H. W. Bicklé,* and *E. P. Bates* for defendant. Dismissed for want of prosecution, April 9, 1917.

8796. PREST-O-LITE CO. (INC.) *v.* C., C., C. & ST. L. RY. CO. ET AL. Rates on empty acetylene gas cylinders from St. Louis Park, Minn., to Speedway, Ind. *A. B. Hayes* and *R. H. Combs* for complainant. *C. T. McCoy* and *J. N. Davis* for Chicago, Milwaukee & St. Paul Ry. Co. Transferred to special docket for adjustment, February 6, 1917.

8825. MOORE STAVE CO. *v.* M. & O. R. R. CO. Rates on oak and gum staves and heading from Columbus, Miss., to points in trunk line territory, Virginia, and Quebec. *C. W. Owen* for complainant. *W. H. Fowle* and *E. D. Mohr* for defendant. Complaint satisfied. Dismissed on request of complainant, February 6, 1917.

8826. **MOORE STAVE Co. v. S. Ry. Co. ET AL.** Rates on staves and heading from Mobile, Ala., to points in trunk line territory, Virginia, and Quebec. *C. W. Owen* for complainant. *W. H. Fowle* and *E. D. Mohr* for defendants. Complaint satisfied. Dismissed on request of complainant, February 6, 1917.

8846. **HARDY SALT Co. v. St. L., I. M. & S. Ry. Co. ET AL.** Rates on salt from St. Louis, Mo., to East Prairie, Mo., via an interstate route. No appearance for complainant. *H. G. Herbel* and *C. C. P. Rausch* for St. Louis, Iron Mountain and Southern Ry. Co. Transferred to special docket for adjustment, January 27, 1917.

8928. **MILWAUKEE BAG Co. v. C., M. & St. P. Ry. Co. ET AL.** Rates on jute and cotton bags and bagging from Milwaukee, Wis., to Akron, Mason City, Rock Valley, Sheldon, Spencer, Sioux City, Fort Dodge, and Leeds, Iowa, and Sioux Falls, S. Dak. *A. C. Otto* for complainant. *C. A. Lahey* for defendants. Dismissed on request of complainant, March 12, 1917.

8931. **COBB Co. v. C., St. P., M. & O. Ry. Co. ET AL.** Icing charges on butter and dressed poultry from St. Paul, Minn., to Hartford, Conn. *T. T. Wing* for complainant. *W. D. Burr* for defendants. Dismissed on request of complainant, April 9, 1917.

8934. **MILWAUKEE BAG Co. v. C., M. & St. P. Ry. Co. ET AL.** Rates on jute and cotton bags and bagging from Milwaukee, Wis., to Chicago, Waukegan, Freeport, and Joliet, Ill., and Gary, Ind. *A. C. Otto* for complainant. *C. A. Lahey*, *R. H. Washcombe*, and *A. F. Cleveland* for defendants. Dismissed on request of complainant, March 12, 1917.

8938. **WILLIAMS v. L. & N. R. R. Co. ET AL.** Rates on lumber from Eleanor, Fla. to Coffee Springs, Ala. *R. P. Williams* for complainant. *W. A. Colston*, *W. A. Northcutt*, and *R. W. Moore* for defendants. Dismissed on request of complainant, March 12, 1917.

8999. **WHTAKER v. PULLMAN Co.** Charges for a lower berth, standard sleeper, between New York and Washington and between certain other points. *N. T. Whitaker* for complainant. *G. S. Fernald* for defendant. Dismissed on request of complainant, April 9, 1917.

9027. **NATIONAL POLE Co. v. M. & I. Ry. Co. ET AL.** Rates on telephone poles from points in Minnesota to destinations in western Canada. *G. H. Rumary* for complainant. *E. W. Beatty* and *D. F. Lyons* for defendants. Complaint satisfied. Dismissed April 9, 1917.

9070. **CALIFORNIA FRUIT GROWERS EXCHANGE ET AL. v. A., T. & S. F. Ry. Co. ET AL.** Charges for reicing on shipments of citrus fruits from points in southern California to various destinations in the United States and Canada. *Cassoday*, *Butler*, *Lamb & Foster* for complainants. *E. W. Camp*, *J. E. Kelby*, and *G. D. Squires* for defendants. Dismissed on request of complainants, March 12, 1917.

9120. **POWER COAL Co. v. C., M. & St. P. Ry. Co. ET AL.** Rates on coal from points in Indiana and Illinois to Dunning, Ill. *E. B. Wilkinson* for complainant. *J. N. Davis*, *H. E. Pierpont*, and *B. H. Dally* for defendants. Dismissed on request of complainant, February 13, 1917.

9165. **GAMBLE ROBINSON Co. v. G. N. Ry. Co. ET AL.** Rates on apples from Wenatchee and Zillah, Wash., to Worland, Wyo., and Hardin, Mont. *L. A. Kramden* for complainant. *C. Donnelly* and *R. B. Scott* for defendants. Dismissed on request of complainant, March 12, 1917.

9219. **STUDEBAKER CORPORATION OF AMERICA v. S. Ry. Co. ET AL.** Charges on one carload of automobiles from Detroit, Mich., to Strasburg, Va., diverted to Washington, D. C. *J. F. Cotter* for complainant. *E. S. Ballard* and *R. W. Moore* for defendants. Dismissed on request of complainant, February 13, 1917.

9246. **STANDARD OIL Co. (KENTUCKY) v. Y. & M. V. R. R. Co. ET AL.** Rates on petroleum fuel oil from Arcola, Miss., to Lenoir City, Tenn. *C. Van Overbeek* for complainant. *R. W. Moore*, *R. V. Fletcher*, *A. P. Humburg*, and *C. B. Northrop* for defendants. Dismissed on request of complainant, February 13, 1917.

9256. GAMBLE-ROBINSON FRUIT CO. v. O., B. & Q. R. R. Co. ET AL. Rates on apples from Seymour, Mo., to Aberdeen, S. Dak. *L. A. Knudsen* for complainant. No appearances for defendants. Complaint satisfied. Dismissed, February 13, 1917.

9269. RIO GRANDE LUMBER CO. v. O. S. L. R. R. Co. ET AL. Switching charges on lumber and forest products to Salt Lake City, Utah, from various points in Washington, Oregon, and Idaho. *R. W. Franklin* for complainant. *J. O. Moran* for defendants. Dismissed on request of complainant, April 9, 1917.

9276. BEAUMONT COTTON OIL MILL CO. v. A. & W. Ry. Co. ET AL. Rates on cotton seed to Beaumont, Tex., and cotton seed products between Beaumont and various points in Louisiana. *C. A. Bland* and *W. P. Luse* for complainant. *Huggins & Kayson* for intervener. *F. R. Dalzell*, *G. B. Wood*, *W. M. Hough*, *G. Waldo*, and *J. A. Lynch* for defendants. *H. S. L'Hommedieu* for Orange Board of Trade. Dismissed on request of complainant, March 12, 1917.

9309. ROUNDS RAPID TRANSIT CO. v. E. Rys. Co. ET AL. Through routes and joint rates for the transportation of passengers. *R. M. Holland* for complainant. *Funkhouser*, *Funkhouser & Markel* for defendants. Dismissed on request of complainant, April 9, 1917.

9366. FOGARTY & SONS v. N. Y., O. & W. Ry. Co. Rates on anthracite coal from New York coal piers to Providence, R. I. *R. N. Kellam* and *J. F. Fogarty* for complainant. *C. L. Andrus* for defendant. Dismissed on request of complainant, March 6, 1917.

9412. WASSON COAL CO. v. O., C., C. & St. L. Ry. Co. Discrimination in furnishing cars for transportation of coal from mines in Saline County, Ill. *W. C. Kane* for complainant. *C. P. Stewart* for defendant. Dismissed on request of complainant, March 6, 1917.

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REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

8183. DENVER LIVE STOCK COMMISSION Co. v. St. L., R. M. & P. Ry. Co. February 13, 1917. Reparation for \$92.98, on account of illegal and unreasonable charges collected on shipments of range cattle from Cimarron, N. Mex., to Denver, Colo.

8092. KNOXVILLE OVERALL Co. v. L. & N. R. R. Co. February 13, 1917. Reparation for \$51.12 on less-than-carload shipments of cotton denims from Canton, Ga., to Knoxville, Tenn., on account of unreasonable charges.

8462. ARMOUR GRAIN Co. v. M. C. R. R. Co. February 13, 1917. Reparation for \$8,002.76, on account of unlawful charges on shipments of corn from Chicago, Ill., to various eastern destinations, stored in transit at Buffalo, N. Y.

4131. GAY OIL Co. v. M. P. Ry. Co. February 19, 1917. Reparation for \$3,490.72 to Gay Oil Co. and for \$2,012.76 to National Refining Co., intervener, on shipments of petroleum and its products from points in Kansas to points in Arkansas, on account of unreasonable charges.

8309. NEWPORT MINING Co. v. C. & N. W. Ry. Co. February 13, 1917. Reparation for \$539.51 on shipments of mining machinery from Milwaukee, Wis., to Bessemer, Mich., on account of unreasonable charges.

7342. MARIETTA KNITTING Co. v. N., C. & St. L. Ry. February 13, 1917. Reparation for \$13.01, on account of unreasonable charges on less-than-carload shipments of hosiery from Marietta, Ga., to various interstate destinations north of the Ohio River and west of the Mississippi River.

6462. NORDSTROM v. C., M. & St. P. Ry. Co. February 13, 1917. Reparation for \$62.28 on shipments of corn from Yorkshire, Iowa, to Kansas City, Mo., on account of unreasonable charges.

7545. BEKKEDAL v. C., St. P., M. & O. Ry. Co. February 13, 1917. Reparation for \$2,430.60 on shipments of lumber from Couderay, Wis., to Boscobel and other points in Wisconsin, interstate, on account of unreasonable charges.

5447. CHEEK & SONS v. C. P. Ry. Co. February 13, 1917. Reparation for \$600.52, on account of unreasonable charges on various commodities from various points to Nashville, Tenn.

3056. COMMERCIAL CLUB OF OMAHA v. A. & S. R. Ry. Co. February 13, 1917. Reparation for \$2,817.26 to various claimants, on shipments of yellow-pine lumber and other forest products from producing points in Arkansas, Louisiana, Mississippi, and Texas to Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, on account of unreasonable charges.

8501. CONNORS-WEYMAN STEEL Co. v. L. & N. R. R. Co. March 12, 1917. Reparation for \$664.76 on shipments of steel billets from Atlanta, Ga., to Helena, Ala., on account of unreasonable charges.

8424. HALLACK & HOWARD LUMBER Co. v. D. & R. G. R. R. Co. March 12, 1917. Reparation for \$1,286.75 on shipments of sawmill machinery and railroad rails from Glencoe, Colo., to Caliente, N. Mex., on account of unreasonable charges.

8284. **HOWELL v. C., B. & Q. R. R. Co.** March 12, 1917. Reparation for \$81.55 on shipments of cattle from Pagosa Springs and Trinidad, Colo., to Kansas City, Mo., fed in transit at Hillrose, Colo., on account of unreasonable charges.

6782. **WEST SALEM CANNING Co. v. C. & N. W. Ry. Co.** March 12, 1917. Reparation for \$158.93 on shipments of canned peas from West Salem, Wis., to St. Paul and Minneapolis, Minn., on account of unreasonable charges.

7641. **ATLANTIC ICE & COAL CORPORATION v. C., N. O. & T. P. Ry. Co.** March 12, 1917. Reparation for \$749.06 on shipments of ice from Chattanooga, Tenn., to Cincinnati, Ohio, on account of unreasonable charges.

5994. **WARNER Co. v. D., L. & W. R. R. Co.** March 12, 1917. Reparation for \$76.01, on account of unlawful charges on cement from Nazareth, Pa., to station formerly known as Niantio, R. I., but now known as Bradford, R. I.

7099. **MCCAULL-DINSMORE Co. v. C. & N. W. Ry. Co.** March 12, 1917. Reparation for \$224.36 on shipments of shelled corn from various points in South Dakota and Iowa to points in Missouri and Kansas, on account of unreasonable charges.

7877. **PREY BROS. & COOPER LIVE STOCK COMMISSION Co. v. T. & P. Ry. Co.** March 12, 1917. Reparation for \$211.20, on shipments of range cattle from Monahans, Tex., consigned to Gillette, Wyo., and reconsigned en route to Fountain, Colo., on account of unlawful charges.

8747. **SCHLITZ BREWING Co. v. S. A. L. Ry.** March 12, 1917. Reparation for \$143.87, on account of damage due to the misrouting of eight carloads of empty beer bottles, returned, consigned from Columbia, S. C., to Milwaukee, Wis.

7936. **BOYD v. A., T. & N. R. R. Co.** March 12, 1917. Reparation for \$177.01, on shipments of yellow-pine lumber from Climax, Ala., to Nashville, Tenn., on account of unreasonable charges.

8574. **ATLANTIC REFINING Co. v. PENN. R. R. Co.** April 9, 1917. Reparation for \$982.81, on shipments of petroleum and petroleum products from Point Breeze, Philadelphia, Pa., to New York, N. Y., and New York lighterage points, on account of unreasonable charges.

8256. **HARTZELL v. C., I. & L. Ry. Co.** April 9, 1917. Reparation for \$111.83, on shipments of walnut logs from West Baden and Paoli, Ind., to Piqua, Ohio, on account of an unreasonable rate.

7703. **SWIFT & Co. v. M. L. & T. R. R. & S. S. Co.** April 9, 1917. Reparation for \$2,011.67 to Swift & Co. and \$1,625.66 to intervener Armour & Co., on shipments of rock salt from Salt Mine and Weeks, La., to Fort Worth, Tex., on account of unreasonable rates.

7793. **HUBINGER BROS. Co. v. A., T. & S. F. Ry. Co.** April 9, 1917. Reparation for \$821.04, on shipment of glucose from Keokuk, Iowa, to Portland, Oreg., on account of unreasonable rate.

8150. **ILLINOIS STEEL Co. v. C. & N. W. Ry. Co.** April 9, 1917. Reparation for \$5,947.72, on shipments of ganister rock from Ablemans, Wis., to South Chicago, Ill., and Gary, Ind., on account of unreasonable rates.

8736. **VALLEY CITY MILLING Co. v. G. R. & I. Ry. Co.** April 9, 1917. Reparation for \$722.72, on shipments of wheat from points in Indiana and Michigan to Grand Rapids, Mich., for milling and reshipment to destinations south of the Ohio River, on account of unreasonable and illegal charges.

8343. **RAWSON-WORKS LUMBER Co. v. N. P. Ry. Co.** April 9, 1917. Reparation for \$640.01, on shipments of lumber from Kamiah, Idaho, to Salt Lake City, Utah, on account of unreasonable rate.

NOTE.—The amount of reparation awarded in the above cases aggregate \$36,750 48.

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St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487, 491).

BOARD, COMPOSITION PAPER. Chicago, Ill., and Mississippi River cities to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (490).

BOARD, FIBER. Illinois, Wisconsin, and Missouri, to and from certain points in, 189.

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Illinois, Wisconsin, and Missouri, to and from certain points in, 189.

Indianapolis, Ind., Milwaukee, Wis., and Chicago, Ill., to Ohio River crossings, Bristol, Tenn.-Va., and other points, 189.

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487, 490).

BODIES, LOGGING-CAR. Kennett, Mo., to Mound, La., 73.

BUCKETS, WELL. Chicago and Peoria, Ill., and Mississippi River cities, to Missouri River cities, and related points, and to and from points in Iowa and Missouri, 481 (492).

BUILDING MATERIAL:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487).

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487).

BUTTER:

Kansas and Nebraska to eastern territory, 700.

Official classification territory. Refrigerator cars, 392.

BUTTERINE. Kansas and Nebraska to eastern territory, 700.

BUTTERMILK. New England from New York and Vermont, 375.

CABBAGE. Texas to St. Louis and Kansas City, Mo., Chicago, Ill., and points east of the Mississippi River, 695.

CALCIUM CHLORIDE. Chicago, Ill., and St. Louis, Mo., to Missouri River cities, and St. Paul and Minneapolis, Minn., 481 (496).

CALVES. Los Angeles, Cal., from Utah, Idaho, and Oregon, 247.

CANDY:

Memphis, Tenn., from Kansas City, Mo., and Omaha, Nebr., 481 (491).

Southern classification territory. Classification, 363.

CANNED GOODS. Hutchinson, Kans., to New Mexico, Texas, and Oklahoma, 689.

CANTALOUPE. Southwestern territory to various destinations, 291.

CARTRIDGES. New England and New York to St. Paul and Duluth, Minn., and rate points, 162.

CASKS. Chicago and Peoria, Ill., and Mississippi River cities, to Missouri River cities and related points, and to and from points in Iowa and Missouri, 481 (492).

CASTINGS. Kalamazoo, Mich., to Milton, Fla., 251.

CASTOR OIL. *See Oil.*

CATTLE. Los Angeles, Cal., from Utah, Idaho, and Oregon, 247.

CEMENT PLASTER. *See Plaster.*

CHAIR STOCK. Missouri and Arkansas to Illinois, Missouri, Indiana, Ohio, Pennsylvania, Michigan, and Wisconsin, 13.

CHEESE. Official classification territory. Refrigerator cars, 392.

CHEESE, POT. New England from New York and Vermont, 375.

CINDERS:

Carney's Point, N. J., from Coatesville, Pa., 227.

Carney's Point, N. J., from Coatesville, Reading, and Birdsboro, Pa., and Wilmington, and Rockford, Del., 1.

CLASS RATES:

Hutchinson, Kans., to New Mexico, Texas, and Oklahoma, 689.

Memphis, Tenn., to and from Arkansas, 121.

Southeastern territory from Toledo, Cleveland, and other points in Ohio, and Detroit and other points in Michigan, 446.

CLASS AND COMMODITY RATES:

Central freight association territory to Lake Huron and Lake Superior ports, 525.
Mississippi River points to and from Illinois, C. F. A., and western trunk line territories; through routes and joint rates, 588.

New York, N. Y., to and from Rhode Island, 417.

Scranton, Williamsport, and Northumberland groups, Pa., to Lake Michigan and Lake Superior ports, and St. Paul and Minneapolis, Minn., 182.

Shreveport, La., from Texas, 45.

Texarkana, Tex., to and from Arkansas, 224.

CLIPPINGS, OAT. Fort Worth, Tex., to various destinations, 259.

CLOTH, BURLAP PRESS. Chicago, Ill., and Mississippi River points, to Missouri River cities, and points east and west thereof, 481 (486).

COAL:

Du Quoin, Ill., to Cape Girardeau, Mo., reconsigned to Gideon, Mo., 579.

Illinois mines to Hazel Spur and other Missouri points, 749.

Kentucky mines to Nashville, Tenn., 366.

North Atlantic ports to Florida, via Port Tampa, Fla., 231.

Port Tampa, Fla. Handling and wharfage charges, 231.

Reynoldsville district, Pa., to Buffalo, Lackawanna, and Harriet, N. Y., and other points in Buffalo territory, 218.

COAL, BITUMINOUS:

Brooksville, Ky., from West Virginia and Kentucky mines, 115.

Clearfield district, Pa., to New Jersey, New York, New England, and eastern Pennsylvania, 654.

Illinois mines to Glencoe and other Missouri points, 412.

Illinois mines to St. Charles, Mo., 157.

La Crosse, Wis., from West Virginia and Illinois mines, and St. Louis, Mo., 605.

New Mexico and Colorado mines to Texas, Oklahoma, and Louisiana, 681.

COAL, GROUND BITUMINOUS. Rillton, Pa., to Chicago, Ill., 745.

COAL, LUMP, PEA, AND SLACK. New Mexico and Colorado mines to Texas, Oklahoma, and Louisiana, 681.

COATING, ROOF:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487).

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487).

COFFEE:

Hutchinson, Kans., to New Mexico, Texas, and Oklahoma, 689.

New Orleans, La., Absorption of drayage charges, 472.

COKE:

La Crosse, Wis., from Indianapolis, Ind., and Chicago, Peoria, and Joliet, Ill., 520.

New Mexico and Colorado to Texas, Oklahoma, and Louisiana, 681.

Reynoldsville and Connellsville districts, Pa., to Buffalo, Lackawanna, and Harriet, N. Y., and other points in Buffalo territory, 218.

COMMODITY RATES. Milton, Fla., from Pittsburgh, Pa., and Kalamazoo, Mich., 251.

COMPOUND, CORE. Official classification territory points to and from, 734.

CONNECTIONS, IRON AND STEEL PIPE. Chicago, Ill., Mississippi River crossings, and other points, to Iowa, Minnesota, Missouri, and other points, 481 (495).

COOPERAGE:

Chicago and Peoria, Ill., and Mississippi River cities, to Missouri River cities and related points, and to and from points in Iowa and Missouri, 481 (492).

Paducah, Ky., from Arkansas and Louisiana, via Memphis, Tenn., 537.

CORN. Trinidad, Colo., to Raton, N. Mex., 218.

COTTON. Montgomery, Ala. Concentration, 197.

COTTON PIECE GOODS. Southeastern territory to C. F. A. territory, 530.

COUPLINGS, IRON AND STEEL PIPE. Chicago, Ill., Mississippi River crossings, and other points, to Iowa, Minnesota, Missouri, and other points, 481 (495).

CREAM:

Canada to Buffalo, N. Y., 724.

New England from New York and Vermont, 375.

CYLINDER, STEAM. Kalamazoo, Mich., to Milton, Fla., 251.

CYLINDERS, COPPERED OR NICKELLED. Southern classification territory. Classification, 443.

DAIRY PRODUCTS:

Kansas and Nebraska to eastern territory, 700.

Missouri River territory to Montana, 700.

Official classification territory. Refrigerator cars, 392.

DENIMS. Southeastern territory to C. F. A. territory, 530.

DEXTRINE. New York, N. Y., to and from Rhode Island, 417.

DIRT, BLACK. Indiana to Chicago switching district, 619.

DIRT, FOUNDRY. Carney's Point, N. J., from Coatesville, Reading, and Birdsboro, Pa., and Wilmington and Rockford, Del., 1.

DRUMS, IRON. Chicago and Peoria, Ill., and Mississippi River cities to Missouri River cities and related points, and to and from points in Iowa and Missouri, 481 (492).

DUCK. Southeastern territory to C. F. A. territory, 530.

DUST, OAT. See Oat Dust.

EARTH, FULLER'S. Jacksonville, Fla., and Savannah, Ga. Embargo, 696.

EGGS:

Kansas City territory to El Paso, Tex., 700.

Official classification territory. Refrigerator cars, 392.

FABRIC, COTTON. Southeastern territory to C. F. A. territory, 530.

FACINGS, FOUNDRY. Central freight association territory. Classification, 734.

FELT, BUILDING:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487).

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487).

FELT, ROOFING:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487).

Minneapolis, Minn., to Duluth, Minn., via interstate route, 199.

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487).

FIBER BOARD. See Board.

FITTINGS, IRON AND STEEL PIPE. Chicago, Ill., Mississippi River crossings, and other points, to Iowa, Minnesota, Missouri, and other points, 481 (495).

FIXTURES, TURPENTINE STILL. Paxton, Fla., to Bagdad Junction, Fla., via interstate route, 251.

FLANNELS, CANTON. Southeastern territory to C. F. A. territory, 530.

FLOUR:

Buffalo, N. Y., and points east of, from Chicago and Milwaukee switching districts, and St. Louis, Mo., via the great lakes, 550.

Grand Rapids, Mich., to Atlanta, Ga., Bessemer, Birmingham, Montgomery, Ensley, and Woodward, Ala., Columbus and Meridian, Miss., Petersburg, Va., and Memphis, Tenn., 75.

FLOUR, FOUNDRY. Official classification territory points to and from, 734.

FOREST PRODUCTS:

Cadillac and Jennings, Mich., to Chicago, Ill., and other points in O. F. A. territory, 636.

Cybur, Miss., to Alabama, Georgia, Louisiana, North Carolina, South Carolina, and other points south of the Ohio River, 268.

Pacific coast to Michigan, 441.

Southern territory to Gulf and south Atlantic ports, for export. Through billing, 476.

FOUNDRY DIRT. Carney's Point, N. J., from Coatesville, Reading, and Birdsboro, Pa., and Wilmington and Rockford, Del., 1.

FOUNDRY FACINGS. See Facings.

FOUNDRY FLOUR. See Flour.

FRUITS:

Idaho, Oregon, Montana, and Utah to various destinations. Refrigeration, 102.

Washington to various destinations, via Spokane, Wash., 143.

FRUITS, CITRUS. Florida to points on and east of the Mississippi River, points on and south of the Ohio River, and points in southeastern territory, 595.

FRUITS, FRESH. Southern and southwestern territories to various destinations, 291.

FULLER'S EARTH. Jacksonville, Fla., and Savannah, Ga. Embargo, 696.

GASOLINE:

Coffeyville, Kans., to Kansas City and Sugar Creek, Mo., 98.

North Fort Worth, Tex., to Kiefer, Okla., 757.

GLASS, ROUGH ROLLED. Sergeant, Pa., to Toronto, Ont., and Montreal, Quebec, 622.

GLUCOSE:

Argo, Ill., to various destinations, 359.

Chicago, Ill., to St. Joseph, Mo., 228.

New York, N. Y., to and from Rhode Island, 417.

GLYCERINE. New York, N. Y., to and from Rhode Island, 417.

GOATS. Los Angeles, Cal., from Utah, Idaho, and Oregon, 247.

GRAIN:

Argo, Ill., to various destinations, 359.

Illinois to Memphis, Tenn., Henderson, Ky., and Evansville, Ind., destined to Mississippi Valley, southeastern and Carolina territories, 378.

Indianapolis, Ind., to Indiana, via Cincinnati, Ohio, 113.

Milwaukee, Wis. Absorption of switching charges, 725.

Missouri to Mississippi and Louisiana, via Cairo, Ill., and Memphis, Tenn., 737.

Northwestern territory to Melrose, Osakis and Janesville, Minn., Huron and Watertown, S. Dak., and Lidgerwood, N. Dak., 741.

Perkins, Ind. Transit arrangement, 195.

Philadelphia, Pa. Insurance, 200.

Terre Haute, Ind. Reconsignment, 195.

GRAIN BY-PRODUCTS:

Argo, Ill., to various destinations, 359.

Chicago and Milwaukee switching districts to points east of Buffalo, N. Y., via the great lakes, 550.

Peoria, Ill., to O. F. A. territory, 431.

GRAIN, COARSE:

St. Louis, Mo., to Jackson and Meridian, Miss., 662.

Vicksburg, Miss., to Jackson, Miss., originating at St. Louis, Mo., 662.

GRAIN PRODUCTS:

Argo, Ill., to various destinations, 359.

Chicago and Milwaukee switching districts to points east of Buffalo, N. Y., via the great lakes, 550.

GRAIN PRODUCTS—Continued.

Illinois to Memphis, Tenn., Henderson, Ky., and Evansville, Ind., destined to Mississippi Valley, southeastern, and Carolina territories, 378.

Indianapolis, Ind., to Indiana, via Cincinnati, Ohio, 113.

Missouri to Mississippi and Louisiana, via Cairo, Ill., and Memphis, Tenn., 737.

St. Louis, Mo., to Jackson and Meridian, Miss., 662.

Vicksburg, Miss., to Jackson, Miss., originating at St. Louis, Mo., 662.

GRANITE:

Hardwick, Vt., to Forest Park, Ill., 137.

Vermont to St. Paul and Duluth, Minn., and rate points, 162.

GRAPEFRUIT. Florida to points on and east of the Mississippi River, points on and south of the Ohio River, and points in southeastern territory, 595.

GRAPES. Chicago and Peoria, Ill., and other points, to and from Iowa, Minnesota, Wisconsin, and upper peninsula of Michigan, 481 (493).

HAY:

Canada to Norfolk, Va., 151.

Indianapolis, Ind., to Indiana, via Cincinnati, Ohio, 113.

New York, N. Y. Embargo, 281.

Tampa, Fla. Embargo, 147.

HEADING. Paducah, Ky., from Arkansas and Louisiana, via Memphis, Tenn., 537.

HEADING, ROUGH. Oak Cliff, Tex., from Arkansas and Louisiana, 241.

HEATING APPARATUS. Chicago, Ill., Mississippi River crossings and other points to Iowa, Minnesota, Missouri, and other points, 481 (495).

HIDES, GREEN SALTED. La Crosse, Wis., to Chicago, Ill., 731.

HOGS. Los Angeles, Cal., from Utah, Idaho, and Oregon, 247.

HOISTS, CHAIN. Philadelphia, Pa., to official classification territory. Classification, 729.

HORSES. Wausau, Wis., from South Omaha, Nebr., and Sioux City, Iowa, 83.

ICE. Wisconsin to Chicago switching district, 561.

IMPLEMENTS, AGRICULTURAL. St. Paul and Minneapolis, Minn., to Missouri River cities, and points east and west thereof, 481 (482).

IRON:

Atlantic ports from C. F. A. and trunk line territories, for export, 5.

Gulf ports from C. F. A. territory, for export, 5.

Pacific coast terminals from Chicago, Ill., Pittsburgh, Pa., and other points, for export to the Orient, 129.

IRON ARTICLES. Atlantic ports from C. F. A. and trunk line territories, for export, 5.

IRON, PIG. Atlantic ports from C. F. A. and trunk line territories, for export, 5.

IRON, STRUCTURAL. Evansville, Ind., to Bowling Green, Ky., 55.

KEGS. Chicago and Peoria, Ill., and Mississippi River cities to Missouri River cities and related points, and to and from points in Iowa and Missouri, 481 (492).

KNITTING FACTORY PRODUCTS. Southeastern territory to C. F. A. territory, 530.

LATH. Snodgrass, Wis., to Minnesota and North Dakota, 243.

LININGS. Free return of, from official classification territory to points in Minnesota, 545.

LIVE STOCK:

Declared value, 510.

Omaha, Nebr., to and from other points in Nebraska. Charges for disinfecting cars, 755.

Pittsburgh, Pa. Charges for disinfecting cars, 429.

LOAM. Indiana to Chicago switching district, 619.

LOCOMOTIVES, ELECTRIC MINING. New England and New York to St. Paul and Duluth, Minn., and rate points, 162.

LOGS. Green Bay, Wis., from Spur 294 and Peck's Spur, Mich., 65.

LUMBER:

Cadillac and Jennings, Mich., to Chicago, Ill., and other points in C. F. A. territory, 636.

California to Colorado, 687.

Central freight association territory from Cybur and other Mississippi points, stopped at Slidell, La., for creosoting, 268.

Cybur, Miss., to Alabama, Georgia, Louisiana, North Carolina, South Carolina, and other points south of the Ohio River, 268.

Gladstone, Mich., and grouped points, to Chicago and other points in Illinois, and Milwaukee and other points in Wisconsin, 629.

Indiana to C. F. A. territory, and points in Wisconsin, Iowa, Missouri, and Kentucky, 117.

Maine and eastern Canada to New England and eastern New York, 641.

Odanah, Wis., to Michigan, Indiana, Ohio, Pennsylvania, West Virginia, Kentucky, and New York, 215.

Pacific coast to Michigan, 441.

Paducah, Ky., from Arkansas and Louisiana, via Memphis, Tenn., 537.

Pearch, Va., to Struthers, Pa., 254.

Snyders, Wis., to Minnesota and North Dakota, 243.

Southern territory to Gulf and south Atlantic ports, for export. Through billing, 476.

Springston, Idaho, to Antelope, Mont., 59.

Washington and Idaho to Montana and North Dakota, 59.

LUMBER, GUM. Richey, Miss., to Narrows, Ky., 154.

LUMBER, HARDWOOD. Arkansas City, Ark., to Mississippi River crossings, Cairo and Thebes, Ill., for beyond, and C. F. A., eastern trunk line, Buffalo-Pittsburgh, Illinois-Wisconsin, and western trunk line territories, 423.

LUMBER, MAHOGANY. New England and New York to St. Paul and Duluth, Minn., and rate points, 162.

LUMBER PRODUCTS:

Gladstone, Mich., and grouped points, to Chicago and other Illinois points, and Milwaukee and other Wisconsin points, 629.

Maine and eastern Canada to New England and eastern New York, 641.

LUMBER, YELLOW-PINE:

Falco, Ala., to points north of the Ohio River, 581.

Lumberton, Miss., to Deferiet, N. Y., 132.

MACHINE, THRESHING. Grand Island, Nebr., to Webber, Kans., 70.

MACHINERY. St. Louis, Mo., to South Fort Smith, Ark., 81.

MACHINERY, ELECTRICAL. New England and New York to St. Paul and Duluth, Minn., and rate points, 162.

MACHINERY, SAWMILL. Chattanooga, Tenn., to Blanks, La., 53.

MEAL, ALFALFA. Kearney, Nebr., to Omaha, Nebr., via interstate route, 264.

MEATS, FRESH:

Austin and Albert Lea, Minn., to points east of Illinois-Indiana state line, 23.

Central freight association territory. Peddler cars, 139.

MELONS. Southern and southwestern territories to various destinations, 291.

MILK. New England from New York and Vermont, 375.

MILK, CONDENSED. New England from New York and Vermont, 375.

MOLASSES:

Louisiana to Texas, 85.

New Orleans, La. Absorption of drayage charges, 472.

Texarkana, Ark.-Tex., from Monroe and New Orleans, La., 85.

MOLASSES, BLACKSTRAP. Gulf ports and points in Louisiana, to Chicago, Peoria and Pekin, Ill., Milwaukee, Wis., and Hammond, Ind., 567.

MUSKMELONS. Southwestern territory to various destinations, 291.

NAPHTHA. North Fort Worth, Tex., to Kiefer, Okla., 757.

OAT CLIPPINGS. See Clippings.

OAT DUST. Fort Worth, Tex., to various destinations, 259.

OIL, CASTOR. New York, N. Y., to and from Rhode Island, 417.

OIL, FUEL. Okmulgee, Okla., to Crystal City, Mo., 71.

OIL, PETROLEUM. Lawrenceville, Ill., to La Crosse, Wis., 438.

OIL, PETROLEUM FUEL. Omaha, Nebr., from Kansas and Oklahoma, 515.

OIL, PETROLEUM ROAD. Chicago, Ill., and Mississippi River crossings, to Kansas City, Mo., and other Missouri River cities, and Des Moines and other interior Iowa cities, 481 (484).

OLEOMARGARINE. Kansas and Nebraska to eastern territory, 700.

ONIONS:

New York, N. Y., from South Deerfield and Hatfield, Mass., 435.

Southwestern territory to various destinations, 291.

ORANGES. Florida to points on and east of the Mississippi River, points on and south of the Ohio River, and points in southeastern territory, 595.

ORE, IRON. Chalybeate Springs, Ga., to Knoxville, Tenn., 747.

OYSTERS. Atlantic seaboard to western territory. Refrigeration, 504.

PACKING-HOUSE PRODUCTS:

Austin and Albert Lea, Minn., to points east of Illinois-Indiana state line, 23.

Central freight association territory. Peddler cars, 139.

Fort Madison, Iowa. Re-icing charges, 262.

PAPER. East Ryegate, Vt., to Northbridge, Mass., New Haven, Conn., and Albany, N. Y., 50.

PAPER, BUILDING:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487).

Minneapolis, Minn., to Duluth, Minn., via interstate route, 199.

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487).

PAPER, PRINTING:

Franklin, N. H., to Augusta, Me., 159.

Michigan to C. F. A. territory, 16.

PAPER, ROOFING:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487).

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487).

PAPER, TOILET. Chicago, Ill., and Mississippi River cities, to and from Missouri River cities, 481 (498).

PAPER, WRAPPING:

Chicago, Ill., and St. Louis, Mo., to and from Missouri River cities, and St. Paul and Minneapolis, Minn., 481 (499).

Michigan to C. F. A. territory, 16.

PELTS. La Crosse, Wis., to Chicago, Ill., 731.

PETROLEUM:

Coffeyville, Kans., to Kansas City and Sugar Creek, Mo., Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, 98.

Kentucky from Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo., 35.

PETROLEUM PRODUCTS:

Coffeyville, Kans., to Kansas City and Sugar Creek, Mo., Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, 98.

Kentucky from Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo., 35.

Lawrenceville, Ill., to La Crosse, Wis., 438.

PINEAPPLES. Florida to points on and east of the Mississippi River, points on and south of the Ohio River, and points in southeastern territory, 595.

PIPE, IRON AND STEEL. Chicago, Ill., Mississippi River crossings, and other points, to Iowa, Minnesota, Missouri, and other points, 481 (495).

PLASTER, CEMENT. Plasterco, Tex., to Oklahoma, Kansas, Missouri, Arkansas, and Memphis, Tenn., 615.

PLATES, STEEL. Pittsburgh, Pa., to Bridgeburg, Ont., 68.

POLES. Snyders, Wis., to Minnesota and North Dakota, 243.

POLES, CEDAR:

Minnesota to North Dakota, 415.

Sand Point, Idaho, to Vale, Oreg., 420.

POSTS, CEDAR:

Tigerton, Wis., to Letcher, S. Dak., 135.

Washington and Idaho to Montana and North Dakota, 59.

POSTS, CEDAR FENCE. Minnesota to Benld, Ill., Brooten, Minn., and points in North Dakota, 415.

POTATOES:

Brooklyn, N. Y., from Parksley, Melfa, and other Virginia points, 67.

Minnesota to official classification territory, 545.

Seabrook, S. C., to New York, N. Y., 186.

Southwestern territory to various destinations, 291.

POULTRY, DRESSED:

Fort Worth, Tex., to Gulf ports, for export to Cuba, 700.

Official classification territory. Refrigerator cars, 392.

PRESS CLOTH, BURLAP. See Cloth.

PULP, MINERAL. New York, N. Y., to and from Rhode Island, 417.

RAFTERS, SILO. Napanee, Ind., to various destinations, 236.

RICE:

New Orleans, La. Absorption of drayage charges, 472.

Texas and Louisiana to various destinations; milling-in-transit, 90.

Texas, Louisiana, and Arkansas to Arkansas, Louisiana, and Texas, 29.

RICE, CLEAN. Texas, Louisiana, and Arkansas to Memphis, Tenn., and points in Arkansas, Louisiana, Texas, seaboard territory, and to Texas ports, for export, 29.

RICE PRODUCTS:

Texas and Louisiana to various destinations; milling-in-transit, 90.

Texas, Louisiana, and Arkansas to Arkansas, Louisiana, and Texas, and points in seaboard territory, 29.

RICE, ROUGH. Arkansas, Louisiana, and Texas, to Memphis, Tenn., and points in Texas, Louisiana, and Arkansas, 29.

ROOFING MATERIAL:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487).

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487).

ROOFING, PREPARED:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487).

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487).

ROSIN. New York, N. Y., to and from Rhode Island, 417.

SALT. New York to various destinations. Car fitting allowances, 276.

SAND. Indiana to Chicago switching district, 619.

SAND, GLASS. Oregon, Ill., to Silica, Ohio, ground and reshipped to Zanesville, Ohio, 63.

SAND, MOLDING. Nashville, Tenn., from Louisville and Newport, Ky., 108.

43 I. C. C.

SCREENINGS, GRAIN. Fort Worth, Tex., to various destinations, 259.

SEEDS. Chicago and Milwaukee switching districts to points east of Buffalo, N. Y., via the great lakes, 550.

SHAFT. Kalamazoo, Mich., to Milton, Fla., 251.

SHEEP:

Los Angeles, Cal., from Utah, Idaho, and Oregon, 247.

South Omaha, Nebr., to South St. Joseph, Mo., 56.

SHEETING, COTTON. Southeastern territory to C. F. A. territory, 530.

SHINGLES:

Pacific coast to Michigan, 441.

Snyders, Wis., to Minnesota and North Dakota, 243.

SHINGLES, ASPHALT:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487).

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487).

SILOS, WOODEN. Crossett, Ark., to points east of the Mississippi River and south of the Ohio River, 500.

SIZE. New England and New York to St. Paul and Duluth, Minn., and rate points, 162.

SODA AND SODA PRODUCTS. Chicago, Ill., and St. Louis, Mo., to Missouri River cities, and St. Paul and Minneapolis, Minn., 481 (496).

SODA, SULPHATE OF. New York, N. Y., to and from Rhode Island, 417.

SODIC ALUMNIC SULPHATE. See SULPHATE, SODIC ALUMNIC.

STARCH. New England and New York to St. Paul and Duluth, Minn., and rate points, 162.

STAVES:

Boston and East Boston, Mass. Demurrage, 679.

Paducah, Ky., from Arkansas and Louisiana, via Memphis, Tenn., 537.

STAVES, ROUGH. Oak Cliff, Tex., from Arkansas and Louisiana, 241.

STAVES, SILO. Napanee, Ind., to various destinations, 236.

STEEL:

Atlantic ports from C. F. A. and trunk line territories, for export, 5.

Gulf ports from C. F. A. territory, for export, 5.

Pacific coast terminals from Chicago, Ill., Pittsburgh, Pa., and other points, for export to the Orient, 129.

STEEL ARTICLES. Atlantic ports from C. F. A. and trunk line territories, for export, 5.

STEEL, FABRICATED. Pittsburgh, Pa., to Bridgeburg, Ont., 68.

STONE. Farley, Iowa, to Illinois, 481 (498).

● **STOVES.** Free return of, from official classification territory to points in Minnesota, 545.

STOVES, HEATING. Kokomo, Ind., to Ottumwa, Iowa, 79.

STRAWBERRIES. Davies Spur, Wash., to various destinations, 143.

STRAWBOARD:

Chicago, Ill., and Mississippi River cities, to and from St. Paul and Minneapolis, Minn., and Missouri River cities, 481 (487, 491).

St. Paul and Minneapolis, Minn., to and from interior Iowa cities, 481 (487, 491).

SUGAR:

Hutchinson, Kans., to New Mexico, Texas, and Oklahoma, 689.

New Orleans, La. Absorption of drayage charges, 472.

SULPHATE, SODIC ALUMNIC. New England and New York to St. Paul and Duluth, Minn., and rate points, 162.

TAILINGS, PETROLEUM WAX. Chicago, Ill., and Mississippi River crossings, to Kansas City, Mo., and other Missouri River cities, and Des Moines and other interior Iowa cities, 481 (484).

TANGERINES. Florida to points on and east of the Mississippi River, points on and south of the Ohio River, and points in southeastern territory, 595.

TIERCES. Chicago and Peoria, Ill., and Mississippi River cities, to Missouri River cities and related points, and to and from points in Iowa and Missouri, 481 (492).

TIES, CROSS. Pensacola, Fla., from Alabama and Florida, 633.

TIES, PINE. Texas to El Paso, Tex., destined to Pearson, Mexico, 753.

TILE, HOLLOW BUILDING. Fort Dodge, Iowa, to Grand Rapids, Mich., and Green Bay and Sturgeon Bay, Wis., 481 (495).

TOWELS, COTTON. Kannapolis and Concord, N. C., to Baltimore, Philadelphia, New York, Boston, and other eastern cities, 625.

TWINE. Southwestern territory to C. F. A. territory, 530.

TWINE, BINDING. New England and New York to St. Paul and Duluth, Minn., and rate points, 162.

VEGETABLES:

Southern and southwestern territories to various destinations, 291.

Texas to St. Louis and Kansas City, Mo., Chicago, Ill., and points east of the Mississippi River, 695.

Washington to various destinations, via Spokane, Wash., 143.

VEHICLES:

Indianapolis, Ind., to Ackerman, Miss., 577.

Toledo, Ohio, to Ohio River crossings and Virginia cities, 111.

WALL BOARD. See Board.

WASTE, COTTON, JUTE AND WOOLEN. Worcester, Mass., to Athens and Sweetwater, Tenn., 727.

WATERMELONS. Southwestern territory to various destinations, 291.

WHEAT:

Indiana and Michigan to Grand Rapids, Mich., milled, and the product shipped to points south of the Ohio River, 75.

Lake Superior ports to New York and other eastern points; lake-and-rail, 338.

Minneapolis, Minn., to Minnesota and Wisconsin, milled and forwarded to New York and other eastern points, through Milwaukee, Wis.; lake-and-rail, 338.

YARN, COTTON. Southeastern territory to C. F. A. territory, 530.

YARN, LATH. New England and New York to St. Paul and Duluth, Minn., and rate points, 162.

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TABLE OF LOCALITIES.

Ackerman, Miss., from Indianapolis, Ind. Vehicles, 577.
Akron, Ohio, from southeastern territory. Cotton piece goods, 530.
Alabama from Cybur and other Mississippi points. Lumber and forest products, 268.
Alabama to Pensacola, Fla. Croasties, 633.
Alabama from Toledo and other points in Ohio, and Detroit and other points in Michigan and Indiana. Class rates, 446.
Alabama to various destinations. Fruits and vegetables, 291.
Alamogordo, N. Mex., from Hutchinson, Kans. Class rates, 689.
Albany, N. Y., from East Ryegate, Vt. Paper, 50.
Albert Lea, Minn., to points east of Illinois-Indiana state line. Fresh meats and packing-house products, 23.
Alexander, N. Dak., from Idaho and Washington. Cedar posts and lumber, 59.
Alexandria, La., to Oak Cliff, Tex. Rough staves and heading, 241.
Amherst, Colo., from California. Lumber, 687.
Anadarko, Okla., from New Mexico and Colorado. Slack coal, 681.
Antelope, Mont., from Springston, Idaho. Lumber, 59.
Arcola, Tex., from New Mexico and Colorado. Coal and coke, 681.
Argo, Ill., to various destinations. Grain and grain products, 359.
Arkadelphia, Ark., to Oak Cliff, Tex. Rough staves and heading, 241.
Arkansas from Arkansas, Louisiana, and Texas. Rice and rice products, 29.
Arkansas to Illinois, Missouri, Indiana, Ohio, Pennsylvania, Michigan, and Wisconsin. Chair stock, 13.
Arkansas from Louisiana. Molasses, 85.
Arkansas from and to Memphis, Tenn. Class rates, 121.
Arkansas to Memphis, Tenn., and points in Texas, Louisiana, Arkansas, and southeastern territory. Rice, 29.
Arkansas to Oak Cliff, Tex. Rough staves and heading, 241.
Arkansas to Paducah, Ky., via Memphis, Tenn. Lumber products, 537.
Arkansas from Plasterco, Tex. Cement plaster, 615.
Arkansas from southern and southwestern territories. Fruits and vegetables, 291.
Arkansas to and from Texarkana, Tex. Class and commodity rates, 224.
Arkansas to various destinations. Fruits, vegetables, potatoes, watermelons, cantaloupes, and muskmelons, 291.
Arkansas City, Ark., to Mississippi River crossings, Cairo and Thebes, Ill., for beyond, and C. F. A., eastern trunk line, Buffalo-Pittsburgh, Illinois-Wisconsin, and western trunk line territories. Lumber, 423.
Artesia, Tex., from New Mexico and Colorado. Coal and coke, 681.
Ashdown, Ark., to Oak Cliff, Tex. Rough staves and heading, 241.
Ashland, Ky., from southeastern territory. Cotton piece goods, 530.
Athens, Tenn., from Worcester, Mass. Cotton, woolen, and jute waste, 727.
Atlanta, Ga., from Grand Rapids, Mich. Flour, 75.
Atlanta, Ga., from Toledo and other points in Ohio, and Detroit and other points in Michigan and Indiana. Class rates, 446.

- Atlantic ports from C. F. A. and trunk line territories, for export. Iron and steel, 5.
- Atlantic seaboard to western territory. Oysters; refrigeration, 504.
- Augusta, Me., from Franklin, N. H. Printing paper, 159.
- Aurora, Ind., from Indianapolis, Ind., via Cincinnati, Ohio. Grain, grain products, and hay, 113.
- Austin, Minn., to points east of Illinois-Indiana state line. Fresh meats and packing-house products, 23.
- Bagdad Junction, Fla., from Paxton, Fla., via interstate route. Turpentine still fixtures, 251.
- Baltimore, Md., from Kannapolis and Concord, N. C. Cotton towels, 625.
- Bath, Canada, to Norfolk, Va. Hay, 151.
- Baton Rouge, La., from Missouri. Grain and grain products, 737.
- Beloit, Wis., to Peoria and other Illinois points. Wall board, 189.
- Benld, Ill., from Remer, Minn. Cedar fence posts, 415.
- Benton, Ill., to Hazel Spur and other Missouri points. Coal, 749.
- Benton Harbor, Mich., to Ohio and Mississippi River crossings, destined to southern territory. Proportional rates; fourth section, 458.
- Berne, Ind., to Grand Rapids, Mich. Wheat, 75.
- Bessemer, Ala., from Grand Rapids, Mich. Flour, 75.
- Birdsboro, Pa., to Carney's Point, N. J. Coal ashes, cinders, and foundry dirt, 1.
- Birmingham, Ala., from Grand Rapids, Mich. Flour, 75.
- Blanks, La., from Chattanooga, Tenn. Sawmill machinery, 53.
- Boston, Mass. Demurrage on staves, 679.
- Boston, Mass., from Kannapolis and Concord, N. C. Cotton towels, 625.
- Boston, Mass., from Maine and eastern Canada. Lumber and lumber products, 641.
- Boston, Mass., from New York and Vermont, via Eagle Bridge, N. Y. Milk, cream, buttermilk, condensed milk, and pot cheese, 375.
- Bowling Green, Ky., from Evansville, Ind. Structural iron, 55.
- Boyd, Ark., from Louisiana. Molasses, 85.
- Bradentown, Fla., from north Atlantic ports, via Port Tampa, Fla. Coal, 231.
- Bridgeburg, Ont., from Pittsburgh, Pa. Fabricated steel, 68.
- Bristol, Tenn.-Va., from Milwaukee, Wis., Chicago, Ill., and Indianapolis, Ind. Wall board, 189.
- Brooklyn, N. Y., from Parksley, Melfa, and other Virginia points. Potatoes, 67.
- Brooksville, Ky., from West Virginia and Kentucky mines. Bituminous coal, 115.
- Brooten, Minn., from Duluth, Minn. Posts and poles, 415.
- Brunswick, Canada, to Norfolk, Va. Hay, 151.
- Buffalo, N. Y., from Canada. Cream, 724.
- Buffalo, N. Y., to C. F. A. territory. Wall board or "beaver board," 189.
- Buffalo, N. Y., from Reynoldsville and Connellsville districts, Pa. Coal and coke, 218.
- Buffalo, N. Y., and points east of, from Chicago and Milwaukee switching districts, and St. Louis, Mo., via the great lakes. Grain products, 550.
- Buffalo-Black Rock switching district from Reynoldsville and Connellsville districts, Pa. Coal and coke, 218.
- Buffalo-Pittsburgh territory from Arkansas City, Ark. Lumber, 423.
- Bulgosa, Ala., to Pensacola, Fla. Crossties, 633.
- Burlington, Vt., to St. Paul and Duluth, Minn., and rate points. Commodity rates, 162.
- Burnside, Canada, to Norfolk, Va. Hay, 151.
- Bushwick station, Brooklyn, N. Y., from Parksley, Melfa, and other Virginia points. Potatoes, 67.
- Cadillac, Mich., to Chicago, Ill., and other points in C. F. A. territory. Lumber and other forest products, 636.

- Cahill, Canada, to Norfolk, Va. Hay, 151.
 Cairo, Ill., from Arkansas City, Ark., for beyond. Lumber, 423.
 Cairo, Ill., from Indianapolis, Ind. Vehicles; fourth section, 577.
 Cairo, Ill., from Missouri, destined to Mississippi and Louisiana. Grain and grain products, 737.
 California to Colorado. Lumber, 687.
 Calumet, Mich., from Pacific coast. Lumber, 441.
 Cambridge, N. Y., to Boston, Mass., via Eagle Bridge, N. Y. Milk, 375.
 Camden, Ala., to Pensacola, Fla. Crossties, 633.
 Camden, Ark., to Oak Cliff, Tex. Rough staves and heading, 241.
 Camp Lake, Wis., to Chicago switching district. Ice, 561.
 Canada to Buffalo, N. Y. Cream, 724.
 Canada to New England and eastern New York. Lumber and lumber products, 641.
 Canada to Norfolk, Va. Hay, 151.
 Canada from southern and southwestern territories. Fruits and vegetables, 291.
 Cannelton, Ind., to C. F. A. territory, and points in Wisconsin, Iowa, Missouri, and Kentucky. Lumber, 117.
 Canterbury, Canada, to Norfolk, Va. Hay, 151.
 Canton, Ohio, from southeastern territory. Cotton piece goods, 530.
 Canton, Ohio, to southeastern territory. Class rates, 446.
 Cape Girardeau, Mo., from Du Quoin, Ill., reconsigned to Gideon, Mo. Coal, 579.
 Cape Girardeau, Mo., from Illinois mines. Coal; fourth section, 749.
 Carney's Point, N. J., from Coatesville, Pa. Coal ashes and cinders, 227.
 Carney's Point, N. J., from Reading, Birdsboro, and Coatesville, Pa., and Rockford and Wilmington, Del. Coal ashes, cinders, and foundry dirt, 1.
 Carolina territory from Memphis, Tenn., Henderson, Ky., and Evansville, Ind., originating in Illinois. Grain and grain products, 378.
 Carrizozo, N. Mex., from Hutchinson, Kans. Class rates, 689.
 Cedar Rapids, Iowa, from Peoria, Ill. Grapes, 481 (494).
 Central freight association territory. Fresh meats and packing-house products in peddler cars, 139.
 Central freight association territory. Classification of foundry facings, 734.
 Central freight association territory, to and from points in. Wall board, 189.
 Central freight association territory from Arkansas City, Ark. Lumber, 423.
 Central freight association territory to Atlantic ports and Gulf ports, for export. Iron and steel, 5.
 Central freight association territory from Buffalo, N. Y. Wall board or "beaver board," 189.
 Central freight association territory from Cadillac and Jennings, Mich. Lumber and other forest products, 636.
 Central freight association territory from Cybur and other Mississippi points, stopped for creosoting at Slidell, La. Lumber, 268.
 Central freight association territory from Indiana. Lumber, 117.
 Central freight association territory to Lake Huron and Lake Superior ports. Rail-and-lake rates, 525.
 Central freight association territory from Michigan. Printing and wrapping paper, 16.
 Central freight association territory to Minnesota. Stoves and linings; fourth section, 545.
 Central freight association territory to and from Mississippi River points. Class and commodity rates; through routes and joint rates, 588.
 Central freight association territory from Peoria, Ill. Grain by-products, 431.
 Central freight association territory from southeastern territory. Cotton piece goods, 530.

- Chaffee, Mo., from Illinois mines. Coal, 749.
- Chalybeate Springs, Ga., to Knoxville, Tenn. Iron ore, 747.
- Chamberlain, Tex., from Hutchinson, Kans. Class rates, 689.
- Chattanooga, Tenn., to Blanks, La. Sawmill machinery, 53.
- Chattanooga, Tenn., to Gulf and south Atlantic ports, for export. Lumber and other forest products; through billing, 476.
- Cheboygan, Mich., from Pittsburgh, Pa. Rail-and-lake rates, 525.
- Chicago, Ill., to Bristol, Tenn.-Va., and rate points, Indianapolis, Ind., Springfield, Ill., and Ohio River crossings. Wall board, 189.
- Chicago, Ill., from Cadillac and Jennings, Mich. Lumber and other forest products, 636.
- Chicago, Ill., from Depot Harbor, Ont. Boat line, 286.
- Chicago, Ill., from Gladstone, Mich., and grouped points. Lumber and lumber products, 629.
- Chicago, Ill., from Gulf ports and points in Louisiana. Blackstrap molasses, 567.
- Chicago, Ill., to Kansas City, Mo., and other Missouri River cities, and Des Moines and other interior Iowa cities, St. Paul, Minneapolis, and other points in Minnesota, Iowa, Missouri, and other points. Asphalt and asphaltum, cooperage, heating apparatus, burlap press cloth, and soda and soda products, 481.
- Chicago, Ill., from La Crosse, Wis. Green salted hides and pelts, 731.
- Chicago, Ill., to La Crosse, Wis. Coke, 520.
- Chicago, Ill., to and from Milwaukee, Wis., and St. Louis, Mo. Wall board, 189.
- Chicago, Ill., to and from Missouri River cities, St. Paul, Minneapolis, and other Minnesota points, interior Iowa cities, and points in Wisconsin, Iowa, and upper peninsula of Michigan. Wrapping and toilet paper, building material, grapes, and acids, 481.
- Chicago, Ill., to Pacific coast terminals, for export to the Orient. Iron and steel, 129.
- Chicago, Ill., from Rillton, Pa. Ground bituminous coal, 745.
- Chicago, Ill., to St. Joseph, Mo. Glucose, 228.
- Chicago, Ill., from St. Paul, Minn. Passenger fares and excess baggage, 51.
- Chicago, Ill., from southeastern territory. Cotton piece goods, 530.
- Chicago, Ill., from Texas. Vegetables, 695.
- Chicago group from Gulf ports and points in Louisiana. Blackstrap molasses, 567.
- Chicago group to Ohio and Mississippi River crossings, destined to southern territory. Proportional rates, 446.
- Chicago switching district to Buffalo, N. Y., and points east of, via the great lakes. Grain products, 550.
- Chicago switching district from Indiana. Sand, loam, and black dirt, 619.
- Chicago switching district from Wisconsin. Ice, 561.
- Chicago territory from southeastern territory. Cotton piece goods, 530.
- China from Chicago, Ill., Pittsburgh, Pa., etc., via Pacific coast terminals. Iron and steel, 129.
- Chippewa Falls, Wis., from Lake Michigan ports. Coal; fourth section, 605.
- Cincinnati, Ohio, to Duluth, Minn. Rail-and-lake rates, 525.
- Cincinnati, Ohio from Greensborough, Ala., diverted to East Boston, Mass. Staves, 679.
- Cincinnati, Ohio, from Indianapolis, Ind., destined to Indiana. Grain, grain products, and hay, 113.
- Cincinnati, Ohio, to Kentucky. Petroleum and products, 35.
- Cincinnati, Ohio, from southeastern territory. Cotton piece goods, 530.
- Clearfield district, Pa., to New Jersey, New York, New England, and eastern Pennsylvania. Bituminous coal, 654.
- Cleveland, Ohio, from southeastern territory. Cotton piece goods, 530.

- Cleveland, Ohio, to southeastern territory. Class rates, 446.
- Coast group, Cal., to Colorado. Lumber, 687.
- Coatesville, Pa., to Carney's Point, N. J. Coal ashes and cinders, 227.
- Coatesville, Pa., to Carney's Point, N. J. Coal ashes, cinders, and foundry dirt, 1.
- Coffeyville, Kans., to Kansas City and Sugar Creek, Mo., Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Petroleum products, 98.
- Colbert, Wash., to various destinations, through Spokane, Wash. Express rates on fruits and vegetables, 143.
- Colorado from California. Lumber, 687.
- Colorado to Texas, Oklahoma, and Louisiana. Coke, 681.
- Colorado mines to Texas, Oklahoma, and Louisiana. Coal, 681.
- Columbia City, Ind., from southeastern territory. Cotton piece goods, 530.
- Columbus, Miss., from Grand Rapids, Mich. Flour, 75.
- Columbus, Ohio, to Milton, Fla. Various commodities, 251.
- Columbus, Ohio, to southeastern territory. Class rates, 446.
- Concord, N. C., to north Atlantic ports and eastern cities. Cotton towels, 625.
- Connecticut from Maine and eastern Canada. Lumber and lumber products, 641.
- Connecticut to and from Westerly, R. I. Passenger fares, 164.
- Connellsville district, Pa., to Buffalo, Lackawanna, and Harriet, N. Y., and other points in Buffalo territory. Coke, 218.
- Council Bluffs, Iowa, from Coffeyville, Kans. Petroleum and products, 98.
- Crisp, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Crossett, Ark., to points east of the Mississippi River and south of the Ohio River. Wooden silos, 500.
- Crowder, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Crystal City, Mo., from Okmulgee, Okla. Fuel oil, 71.
- Cuba from Gulf ports, originating at Fort Worth, Tex. Dressed poultry, 700.
- Cybur, Miss., to Alabama, Georgia, Louisiana, North Carolina, and South Carolina, and other points south of Ohio River, and points in C. F. A. territory. Lumber and forest products, 268.
- Dalhart, Tex., from Hutchinson, Kans. Class rates, 689.
- Davenport group, Iowa, to Ohio and Mississippi River crossings, destined to southern territory. Proportional rates, 458.
- Davies Spur, Wash., to various destinations. Strawberries, 143.
- Dayton, Ohio, to southeastern territory. Class rates, 446.
- De Sota, Ill., to Hazel Spur and other Missouri points. Coal, 749.
- Dean, Wash., to various destinations, through Spokane, Wash. Express rates on fruits and vegetables, 143.
- Debec Junction, Canada, to Norfolk, Va. Hay, 151.
- Deer Park, Wash., to various destinations, through Spokane, Wash. Express rates on fruits and vegetables, 143.
- Deferiet, N. Y., from Lumberton, Miss. Yellow-pine lumber, 132.
- Delaware from Tennessee. Barytes, 334.
- Delaware, Okla., to Coffeyville, Kans., destined to Kansas City and Sugar Creek, Mo., Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Gasoline, petroleum, and petroleum products, 98.
- Denison, Wash., to various destinations, through Spokane, Wash. Express rates on fruits and vegetables, 143.
- Depot Harbor, Ont., to Chicago, Ill., and Milwaukee, Wis. Boat lines, 286.
- Des Moines, Iowa, from Chicago, Ill., and Mississippi River crossings. Asphalt and asphaltum, 481.
- Detroit, Mich., from southeastern territory. Cotton piece goods, 530.
- Detroit, Mich., to southeastern territory. Class rates, 446.

- Dock Siding, Ind., to Chicago switching district. Sand, loam, and black dirt, 619.
- Dryden, Mich., to Tampa, Fla. Hay, 147.
- Du Quoin, Ill., to Cape Girardeau, Mo., reconsigned to Gideon, Mo. Coal, 579.
- Du Quoin, Ill., to Hazel Spur and other Missouri points. Coal, 749.
- Dubuque, Iowa, to Oshkosh, Wis. Grapes, 481 (494).
- Dubuque, Iowa, to southern territory. Proportional rates, 458.
- Duluth, Minn., to Broton, Minn. Posts and poles, 415.
- Duluth, Minn., from C. F. A. territory. Rail-and-lake rates, 525.
- Duluth, Minn., from Chicago, Ill. Grapes, 481 (494).
- Duluth, Minn., from Cincinnati, Ohio. Rail-and-lake rates, 525.
- Duluth, Minn., to Eau Claire, Chippewa Falls, Menomonie, and Menomonie Junction, Wis. Coal; fourth section, 605.
- Duluth, Minn., from Minneapolis, Minn., via interstate route. Roofing felt and building paper, 199.
- Duluth, Minn., from New York and New England. Rail-and-lake rates, 162.
- Eagle Bridge, N. Y., from New York and Vermont, consigned to Boston, Mass. Milk, cream, buttermilk, condensed milk, and pot cheese, 375.
- Earlington, Ky., to Nashville, Tenn. Coal, 366.
- East Boston, Mass. Demurrage on staves, 679.
- East Greenwich, R. I., to and from New York, N. Y. Class and commodity rates, 417.
- East Ryegate, Vt., to Northbridge, Mass., New Haven, Conn., and Albany, N. Y. Paper, 50.
- East St. Louis, Ill., from Lockport, Marseilles, and Morris, Ill. Wall board, 189.
- Eastern cities from Kannapolis and Concord, N. C. Cotton towels, 625.
- Eastern port cities from Kannapolis and Concord, N. C. Cotton towels, 625.
- Eastern territory from Chicago and Milwaukee switching districts, and St. Louis, Mo., via the great lakes. Grain products, 550.
- Eastern territory from Clearfield district, Pa. Bituminous coal, 654.
- Eastern territory from Kansas and Nebraska. Dairy products, 700.
- Eastern trunk line territory from Arkansas City, Ark. Lumber, 423.
- Eau Claire, Wis., from Lake Michigan ports. Coal; fourth section, 605.
- El Paso, Tex., from Kansas City territory. Eggs, 700.
- El Paso, Tex., from Texas, destined to Pearson, Mexico. Pine ties, 753.
- Elizabeth, N. J., from Clearfield district, Pa. Bituminous coal, 654.
- Elkhart, Ind., to Ohio and Mississippi river crossings, destined to southern territory. Proportional rates; fourth section, 458.
- Encinal, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Ende, N. Mex., from Hutchinson, Kans. Class rates, 689.
- Enid, Okla., from New Mexico and Colorado. Coal and coke, 681.
- Ensley, Ala., from Grand Rapids, Mich. Flour, 75.
- Escambia Junction, Ala., to Pensacola, Fla. Crossties, 633.
- Escondida, N. Mex., from Hutchinson, Kans. Class rates, 689.
- Evansville, Ind., to Bowling Green, Ky. Structural iron, 55.
- Evansville, Ind., from Illinois, destined to Mississippi Valley, southeastern, and Carolina territories. Grain and grain products, 378.
- Falco, Ala., to points north of the Ohio River. Yellow-pine lumber, 581.
- Falco, Ala., to Pensacola, Fla. Crossties, 633.
- Faribault, Minn., from Peoria, Ill. Grapes, 481 (494).
- Farley, Iowa, to Illinois. Stone, 481 (498).
- Fleming, Colo., from California. Lumber, 687.
- Florida to points on and east of the Mississippi River, points on and south of the Ohio River, and points in southeastern territory. Citrus fruits, 595.
- Florida to Pensacola, Fla. Crossties, 633.

- Florida from Toledo and other points in Ohio, and Detroit and other points in Michigan and Indiana. Class rates, 446.
- Florida to various destinations. Fruits and vegetables, 291.
- Foley, Ala., to Pensacola, Fla. Crossties, 633.
- Fordyce, Ark., to Oak Cliff, Tex. Rough staves and heading, 241.
- Forest Hills, Mass., from New York and Vermont. Milk, cream, buttermilk, condensed milk, and pot cheese, 375.
- Forest Park, Ill., from Hardwick, Vt. Granite, 137.
- Fort Dodge, Iowa, to Grand Rapids, Mich., and Green Bay and Sturgeon Bay, Wis. Hollow building tile and blocks, 481 (495).
- Fort Madison, Iowa. Re-icing charges on packing-house products, 262.
- Fort Wayne, Ind., from southeastern territory. Cotton piece goods, 530.
- Fort Worth, Tex., to Gulf ports, for export to Cuba. Dressed poultry, 700.
- Fort Worth, Tex., to various destinations. Grain screenings, oat clippings, and oat dust, minimum carload weights, 259.
- Frankfort, Ky., from Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo. Petroleum and products, 35.
- Franklin, N. H., to Augusta, Me. Printing paper, 159.
- Galien, Colo., from California. Lumber, 687.
- Galveston, Tex., from Fort Worth, Tex., destined to Cuba. Dressed poultry, 700.
- Galveston, Tex., to Grand Island and Hastings, Nebr. Bananas, 353.
- Galveston, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Galveston, Tex., to and from New York, N. Y. Boat lines, 168.
- Garwood, N. J., from Clearfield district, Pa. Bituminous coal, 654.
- Gary, Ind., to Chicago switching district. Sand, loam, and black dirt, 619.
- Georgia to eastern port cities. Cotton towels; fourth section, 625.
- Georgia to south Atlantic and Gulf ports, for export. Lumber and other forest products; through billing, 476.
- Georgia from Toledo and other points in Ohio, and Detroit and other points in Michigan and Indiana. Class rates, 446.
- Georgetown, Ky., from Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo. Petroleum and products, 35.
- Georgia from Cybur and other Mississippi points. Lumber and forest products, 268.
- Gideon, Mo., from Du Quoin, Ill., reconsigned at Cape Girardeau, Mo. Coal, 579.
- Girard Point, Philadelphia, Pa. Insurance charges on grain stored in elevator, 200.
- Gladstone, Mich., to Chicago and other Illinois points, and Milwaukee and other Wisconsin points. Lumber and lumber products, 629.
- Glencoe, Mo., from Illinois mines. Bituminous coal, 412.
- Goodwell, Okla., from Hutchinson, Kans. Class rates, 689.
- Goodwell, Okla., from New Mexico and Colorado. Coal, 681.
- Graceville, Fla., to Pensacola, Fla. Crossties, 633.
- Grand Island, Nebr., from New Orleans, La., and other Gulf ports. Bananas, 353.
- Grand Island, Nebr., to Webber, Kans. Threshing machine, 70.
- Grand Rapids, Mich., to Atlanta, Ga., Bessemer, Birmingham, Ensley, Montgomery, and Woodward, Ala., Columbus and Meridian, Miss., Petersburg, Va., and Memphis, Tenn. Flour, 75.
- Grand Rapids, Mich., from Fort Dodge, Iowa. Hollow building tile and blocks, 481 (495).
- Grand Rapids, Mich., from Indiana and Michigan. Wheat, 75.
- Grand Rapids, Mich., from southeastern territory. Cotton piece goods, 530.
- Great lakes from Chicago and Milwaukee switching districts, and St. Louis, Mo., destined to eastern territory. Grain products, 550.
- Green Bay, Wis., from Fort Dodge, Iowa. Hollow building tile and blocks, 481 (495).

- Green Bay, Wis., from Spur 294 and Pecks Spur, Mich. Logs, 65.
- Green line territory from Ohio River crossings. Proportional rates, 458.
- Greendale, Ind., from Indianapolis, Ind., via Cincinnati, Ohio. Grain, grain products, and hay, 113.
- Greensborough, Ala., to East Boston, Mass., diverted in transit at Cincinnati, Ohio. Staves, 679.
- Greensburg, Ind., from Indianapolis, Ind., via Cincinnati, Ohio. Grain, grain products, and hay, 113.
- Greenville, Miss., from southern and southwestern territories. Fruits and vegetables, 291.
- Groton, Conn., to and from Westerly, R. I. Passenger fares, 164.
- Gulf ports from C. F. A. territory, for export. Iron and steel, 5.
- Gulf ports to Chicago, Peoria, and Pekin, Ill., Milwaukee, Wis., and Hammond, Ind. Blackstrap molasses, 567.
- Gulf ports from Fort Worth, Tex., for export to Cuba. Dressed poultry, 700.
- Gulf ports to Grand Island and Hastings, Nebr. Bananas, 353.
- Gulf ports from southern territory, for export. Lumber and forest products; through billing, 476.
- Guymon, Okla., from Hutchinson, Kans. Class rates, 689.
- Hammond, Ind., from Gulf ports and points in Louisiana. Blackstrap molasses, 567.
- Hardwick, Vt., to Forest Park, Ill. Granite, 137.
- Harlem River, N. Y., from Maine and eastern Canada. Lumber and lumber products, 641.
- Harriet, N. Y., from Reynoldsville and Connellsville districts, Pa. Coal and coke, 218.
- Hartford, Conn., from Maine and eastern Canada. Lumber and lumber products, 641.
- Hastings, Nebr., from New Orleans, La., and other Gulf ports. Bananas, 353.
- Hatfield, Mass., to New York, N. Y. Onions, 435.
- Havana, Cuba, to and from New Orleans, La. Boat lines, 168.
- Haxtun, Colo., from California. Lumber, 687.
- Haynesville, La., to Oak Cliff, Tex. Rough staves and heading, 241.
- Hazard, Pa., from Tennessee. Barytes, 334.
- Hazel Spur, Mo., from Illinois mines. Coal, 749.
- Henderson, Ky., from Illinois, destined to Mississippi Valley, southeastern, and Carolina territories. Grain and grain products, 378.
- Herrin, Ill., to Hazel Spur and other Missouri points. Coal, 749.
- Hoagland, Ind., to Grand Rapids, Mich. Wheat, 75.
- Holyoke, Colo., from California. Lumber, 687.
- Hongkong, China, from Chicago, Ill., Pittsburgh, Pa., etc., via Pacific coast terminals. Iron and steel, 129.
- Houlton, Me., to New England and eastern New York. Lumber and lumber products, 641.
- Houston, Tex., from Colorado and New Mexico. Coal and coke, 681.
- Howe, Ind., to Grand Rapids, Mich. Wheat, 75.
- Huntertown, Ind., to Grand Rapids, Mich. Wheat, 75.
- Huntington, Tex., to El Paso, Tex., destined to Pearson, Mexico. Pine ties, 753.
- Huron, S. Dak., from northwestern territory. Grain, 741.
- Hutchinson, Kans., to New Mexico, Texas, and Oklahoma. Class rates, 689.
- Idaho to Los Angeles, Cal. Cattle, calves, sheep, goats, and hogs, 247.
- Idaho to Montana and North Dakota. Cedar posts and lumber, 59.
- Idaho to various destinations. Fruit; refrigeration, 102.
- Illinois from Beloit, Wis. Wall board, 189.
- Illinois from Farley, Iowa. Stone, 481 (498).

- Illinois from Gladstone, Mich., and grouped points. Lumber and lumber products, 629.
- Illinois to Memphis, Tenn., Henderson, Ky., and Evansville, Ind., destined to Mississippi Valley, southeastern, and Carolina territories. Grain and grain products, 378.
- Illinois from Missouri and Arkansas. Chair stock, 13.
- Illinois to Ohio and Mississippi river crossings, destined to southern territory. Proportional rates, 458.
- Illinois to and from Wisconsin, Illinois, and Missouri. Wall board, 189.
- Illinois-Indiana state line, points east of, from Austin and Albert Lea, Minn. Fresh meats and packing-house products, 23.
- Illinois mines to Glencoe and other Missouri points. Bituminous coal, 412.
- Illinois mines to Hazel Spur and other Missouri points. Coal, 749.
- Illinois mines to La Crosse, Wis. Bituminous coal, 605.
- Illinois mines to St. Charles, Mo. Bituminous coal, 157.
- Illinois territory to and from Mississippi River points. Class and commodity rates; through routes and joint rates, 588.
- Illinois-Wisconsin territory from Arkansas City, Ark. Lumber, 423.
- Illmo, Mo., from Illinois mines. Coal, 749.
- Indiana to C. F. A. territory and points in Wisconsin, Iowa, Missouri, and Kentucky. Lumber, 117.
- Indiana to Chicago switching district. Sand, black dirt, and loam, 619.
- Indiana to Grand Rapids, Mich., milled and reshipped to points south of the Ohio River. Wheat, 75.
- Indiana from Indianapolis, Ind., via Cincinnati, Ohio. Grain, grain products, and hay, 113.
- Indiana from Michigan. Wrapping and printing paper, 16.
- Indiana from Missouri and Arkansas. Chair stock, 13.
- Indiana from Odanah, Wis. Lumber, 215.
- Indiana to Ohio and Mississippi river crossings, destined to southern territory. Proportional rates, 458.
- Indiana to southeastern territory. Class rates, 446.
- Indiana-Illinois state line, points east of, from Wichita, Kans., re-iced at Fort Madison, Iowa. Packing-house products, 262.
- Indiana-Illinois state line, points west of, from Cadillac and Jennings, Mich. Lumber and other forest products, 636.
- Indianapolis, Ind., to Ackerman, Miss. Vehicles, 577.
- Indianapolis, Ind., to Bristol, Tenn.-Va., and rate points. Wall board, 189.
- Indianapolis, Ind., to Indiana, via Cincinnati, Ohio. Grain, grain products, and hay, 113.
- Indianapolis, Ind., to La Crosse, Wis. Coke, 520.
- Indianapolis, Ind., from Milwaukee, Wis., and Chicago, Ill. Wall board, 189.
- Indianapolis, Ind., to Ohio River crossings, destined to green line territory. Proportional rates; fourth section, 458 (470).
- Indianfield, Mich., to Grand Rapids, Mich. Wheat, 75.
- Interior Iowa cities from Chicago, Ill., and Mississippi River crossings. Asphalt and asphaltum, 481.
- Interior Iowa cities to and from Chicago, Ill., Mississippi River cities, and St. Paul and Minneapolis, Minn. Acids, asphalt shingles, and strawboard and chip board, 481.
- Iowa to and from Chicago and Peoria, Ill., Mississippi River cities, and St. Paul and Minneapolis, Minn. Cooperage, grapes, acids, asphalt shingles, chip board, and strawboard, 481.
- Iowa from Chicago, Ill., and Mississippi River crossings. Asphalt, asphaltum, and heating apparatus, 481.

- Iowa from Indiana. Lumber, 117.
- Iowa to Ohio River crossings. Proportional rates, 458.
- Jackson, Miss., from Missouri. Grain and grain products, 737.
- Jackson, Miss., from St. Louis, Mo. Coarse grain and grain products, 662.
- Jacksonville, Fla. Embargo on fuller's earth, 696.
- Jacksonville, Fla., to points on and east of the Mississippi River, points on and south of the Ohio River, and points in southeastern territory. Citrus fruits, 595.
- Janesville, Minn., from northwestern territory. Grain, 741.
- Japan from Chicago, Ill., Pittsburgh, Pa., etc., via Pacific coast terminals. Iron and steel, 129.
- Jennings, Mich., to Chicago, Ill., and other points in C. F. A. territory. Lumber and other forest products, 636.
- Johnstown, Pa. Switching, 654.
- Joliet, Ill., to La Crosse, Wis. Coke, 520.
- Kalamazoo, Mich., to Grand Rapids, Mich. Wheat, 75.
- Kalamazoo, Mich., to Milton, Fla. Castings, steam cylinder, and shaft, 251.
- Kalamazoo, Mich., to Ohio and Indiana. Printing and wrapping paper, 16.
- Kalamazoo, Mich., from southeastern territory. Cotton piece goods, 530.
- Kannapolis, N. C., to north Atlantic ports and eastern cities. Cotton towels, 625.
- Kansas to eastern territory, and points in Montana. Dairy products, 700.
- Kansas to El Paso, Tex. Eggs, 700.
- Kansas to Omaha, Nebr. Petroleum fuel oil, 515.
- Kansas from Plasterco, Tex. Cement plaster, 615.
- Kansas to various destinations. Fruits, vegetables, and potatoes, 291.
- Kansas City, Mo., from Chicago, Ill., and Mississippi River crossings. Asphalt and asphaltum, 481.
- Kansas City, Mo., from Coffeyville, Kans. Gasoline, petroleum, and petroleum products, 98.
- Kansas City, Mo., to Memphis, Tenn. Candy, 481 (491).
- Kansas City, Mo., from Texas. Vegetables, 695.
- Kansas City territory to El Paso, Tex. Eggs, 700.
- Kaufman, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Kearney, Nebr., to Omaha, Nebr., via interstate route. Alfalfa meal, 264.
- Kennett, Mo., to Mound, La. Logging-car bodies, 73.
- Kentucky from Indiana. Lumber, 117.
- Kentucky from Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo. Petroleum and
- Kentucky from Odanah, Wis. Lumber, 215.
- Kentucky from Toledo and other points in Ohio, and Detroit and other points in Michigan and Indiana. Class rates, 446.
- Kentucky to various destinations. Fruits and vegetables, 291.
- Kentucky mines to Brooksville, Ky. Bituminous coal, 115.
- Kentucky mines to Nashville, Tenn. Coal, 366.
- Kiblah, Ark., from Louisiana. Molasses, 85.
- Kiefer, Okla., from North Fort Worth, Tex. Gasoline and naphtha, 757.
- Knoxville, Tenn., from Chalybeate Springs, Ga. Iron ore, 747.
- Kobe, Japan, from Chicago, Ill., Pittsburgh, Pa., etc., via Pacific coast terminals. Iron and steel, 129.
- Kokomo, Ind., to Ottumwa, Iowa. Heating stoves, 79.
- La Crosse, Wis., from Chicago, Ill. Grapes, 481 (494).
- La Crosse, Wis., to Chicago, Ill. Green salted hides and pelts, 731.
- La Crosse, Wis., from Indianapolis, Ind., and Chicago, Peoria, and Joliet, Ill. Coke, 520.
- La Crosse, Wis., from Lawrenceville, Ill. Petroleum oil and products, 438.

- La Crosse, Wis., from West Virginia and Illinois mines, and St. Louis, Mo. Bituminous coal, 605.
- La Grange, Ind., to Grand Rapids, Mich. Wheat, 75.
- La Otto, Ind., to Grand Rapids, Mich. Wheat, 75.
- Lackawanna, N. Y., from Reynoldsville and Connellsville districts, Pa. Coal and coke, 218.
- Lake Huron ports from C. F. A. territory. Rail-and-lake rates, 525.
- Lake Michigan ports to Eau Claire, Chippewa Falls, Menomonie, and Menomonie Junction, Wis. Coal; fourth section, 605.
- Lake Michigan ports from Scranton, Williamsport, and Northumberland groups, Pa. Class and commodity rates, 182.
- Lake Superior ports from C. F. A. territory. Rail-and-lake rates, 525.
- Lake Superior ports to New York and other eastern points. Wheat, lake-and-rail, 338.
- Lake Superior ports from Scranton, Williamsport, and Northumberland groups, Pa. Class and commodity rates, 182.
- Lakeland, Fla., from north Atlantic ports, via Port Tampa, Fla. Coal, 231.
- Lakewood, Fla., to Pensacola, Fla. Crossties, 633.
- Lamont, Tex., to El Paso, Tex., destined to Pearson, Mexico. Pine ties, 753.
- Laredo, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Lawrenceburg, Ind., from Indianapolis, Ind., via Cincinnati, Ohio. Grain, grain products, and hay, 113.
- Lawrenceburg Junction, Ind., from Indianapolis, Ind., via Cincinnati, Ohio. Grain, grain products, and hay, 113.
- Lawrenceville, Ill., to La Crosse, Wis. Petroleum oil and products, 438.
- Lesbia, N. Mex., from Hutchinson, Kans. Class rates, 689.
- Letcher, S. Dak., from Tigerton, Wis. Cedar posts, 135.
- Lexington, Ky., from Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo. Petroleum and products, 35.
- Lidgerwood, N. Dak., from northwestern territory. Grain, 741.
- Little Rock, Ark., to Oak Cliff, Tex. Rough staves and heading, 241.
- Lockport, Ill., to St. Louis, Mo., and East St. Louis, Ill. Wall board, 189.
- Los Angeles, Cal., from Utah, Idaho, and Oregon. Cattle, calves, sheep, goats, and hogs, 247.
- Louisiana from Arkansas, Louisiana, and Texas. Rice and rice products, 29.
- Louisiana to Arkansas. Molasses, 85.
- Louisiana to Chicago, Peoria, and Pekin, Ill., Milwaukee, Wis., and Hammond, Ind. Blackstrap molasses, 567.
- Louisiana from Cybur and other Mississippi points. Lumber and forest products, 268.
- Louisiana to Memphis, Tenn., and points in Texas, Arkansas, Louisiana, and southeastern territory. Rice, 29.
- Louisiana from Missouri, via Cairo, Ill., and Memphis, Tenn. Grain and products, 737.
- Louisiana from New Mexico and Colorado. Coal and coke, 681.
- Louisiana to Oak Cliff, Tex. Rough staves and heading, 241.
- Louisiana to Paducah, Ky., via Memphis, Tenn. Lumber products, 537.
- Louisiana to various destinations. Fruits, vegetables, and melons, 291.
- Louisiana to various destinations. Rice; milling in transit, 90.
- Louisville, Ky., to other Kentucky points via interstate route. Petroleum and products, 35.
- Louisville, Ky., to Nashville, Tenn. Molding sand, 108.
- Lower peninsula of Michigan to southeastern territory. Class rates, 446.
- Lumberton, Miss., to Deferiet, N. Y. Yellow-pine lumber, 132.

- McCloud, Cal., to Colorado. Lumber, 687.
- McCools, Ind., to Chicago switching district. Sand, loam, and black dirt, 619.
- Macon, Ga., to C. F. A. territory. Cotton piece goods, 530.
- Madison, Wis., from Peoria, Marseilles, Morris, and Wilmington, Ill. Wall board, 189.
- Maine to New England and eastern New York. Lumber and lumber products, 641.
- Manila, P. I., from Chicago, Ill., Pittsburgh, Pa., etc., via Pacific coast terminals. Iron and steel, 129.
- Manville, N. J., from Clearfield district, Pa. Bituminous coal, 654.
- Marietta, Ohio, from southeastern territory. Cotton piece goods, 530.
- Marion, Ill., to Hazel Spur and other Missouri points. Coal, 749.
- Marissa, Ill., to Hazel Spur and other Missouri points. Coal, 749.
- Marseilles, Ill., to Milwaukee, Watertown, and Madison, Wis., St. Louis, Mo., and East St. Louis, Ill. Wall board, 189.
- Marshalltown, Iowa, from Chicago, Ill. Grapes, 481 (494).
- Maryland from Tennessee. Barytes, 334.
- Mason City, Iowa, from Chicago, Ill. Grapes, 481 (494).
- Massachusetts from Maine and eastern Canada. Lumber and lumber products, 641.
- Massachusetts from Tennessee. Barytes, 334.
- Mayton, Ark., to Oak Cliff, Tex. Rough staves and heading, 241.
- Melfa, Va., to Bushwick station, Brooklyn, N. Y. Potatoes, 67.
- Mellwood, Ark., to Oak Cliff, Tex. Rough staves and heading, 241.
- Melrose, Minn., from northwestern territory. Grain, 741.
- Memphis, Tenn., to and from Arkansas. Class rates, 121.
- Memphis, Tenn., from Arkansas and Louisiana, destined to Paducah, Ky. Lumber products, 537.
- Memphis, Tenn., from Arkansas and Louisiana, destined to southeastern territory. Rice, 29.
- Memphis, Tenn., from Arkansas City, Ark., for beyond. Lumber, 423.
- Memphis, Tenn., from Grand Rapids, Mich. Flour, 75.
- Memphis, Tenn., from Illinois, destined to Mississippi Valley, southeastern, and Carolina territories. Grain and products, 378.
- Memphis, Tenn., from Kansas City, Mo., and Omaha, Nebr. Candy, 481 (491).
- Memphis, Tenn., from Missouri, destined to Mississippi and Louisiana. Grain and grain products, 737.
- Memphis, Tenn., to and from points on the Mississippi River. Class and commodity rates; through routes and joint rates, 588.
- Memphis, Tenn., from Plasterco, Tex. Cement plaster, 615.
- Memphis, Tenn., from southern and southwestern territories. Fruits and vegetables, 291.
- Memphis, Tenn., from Texas, Louisiana, and Arkansas. Rice, 29.
- Menard, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Mendon, Mich., to Grand Rapids, Mich. Wheat, 75.
- Menomonie, Wis., from Lake Michigan ports. Coal; fourth section, 605.
- Menomonie Junction, Wis., from Lake Michigan ports. Coal; fourth section, 605.
- Meridian, Miss., from Grand Rapids, Mich. Flour, 75.
- Meridian, Miss., from Missouri. Grain grain and products, 737.
- Meridian, Miss., from St. Louis, Mo. Coarse grain and grain products, 662.
- Mesa, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Michigan to C. F. A. territory. Printing and wrapping paper, 16.
- Michigan to Chicago and other Illinois points, and Milwaukee and other Wisconsin points. Lumber and lumber products, 629.
- Michigan to Grand Rapids, Mich., milled and reshipped to points south of the Ohio River. Wheat, 75.

- Michigan from Missouri and Arkansas. Chair stock, 13.
- Michigan from Odanah, Wis. Lumber, 215.
- Michigan to Ohio and Mississippi River crossings, destined to southern territory. Proportional rates, 458.
- Michigan from Pacific coast. Lumber, 441.
- Michigan (upper peninsula) to and from Chicago and Peoria, Ill. Grapes, 481 (493).
- Michigan to southeastern territory. Class rates, 446.
- Midway, Ky., from Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo. Petroleum and products, 35.
- Milan, Wash., to various destinations, through Spokane, Wash. Express rates on fruits and vegetables, 143.
- Miller, Ind., to Chicago switching district. Sand, loam, and black dirt, 619.
- Millville, Canada, to Norfolk, Va. Hay, 151.
- Milton, Fla., from Pittsburgh, Pa., Columbus, Ohio, and Kalamazoo, Mich. Various commodities, 251.
- Milwaukee, Wis. Absorption of switching charges on grain, 725.
- Milwaukee, Wis., to Bristol, Tenn.-Va., and rate points, Springfield, Sterling, and Rock Falls, Ill., Indianapolis, Ind., and Ohio River crossings. Wall board, 189.
- Milwaukee, Wis., to and from Chicago, Rockford, and Waukegan, Ill. Wall board, 189.
- Milwaukee, Wis., from Depot Harbor, Ont. Boat line, 286.
- Milwaukee, Wis., from Gladstone, Mich., and grouped points. Lumber and lumber products, 629.
- Milwaukee, Wis., from Gulf ports and points in Louisiana. Blackstrap molasses, 567.
- Milwaukee, Wis., from Minneapolis, Minn., milled at Minnesota and Wisconsin mills, and forwarded to New York and other eastern points. Wheat, lake-and-rail, 338.
- Milwaukee, Wis., from Peoria, Marseilles, Morris, and Wilmington, Ill. Wall board, 189.
- Milwaukee group to Ohio and Mississippi River crossings, destined to southern territory. Proportional rates, 458.
- Milwaukee switching district to Buffalo, N. Y., and points east of, via the great lakes. Grain products, 550.
- Minneapolis, Minn., from C. F. A. territory. Rail-and-lake rates, 525.
- Minneapolis, Minn., to and from Chicago, Ill., Mississippi River cities, and interior Iowa cities. Building material, wrapping paper, asphalt shingles, strawboard, and chip board, 481.
- Minneapolis, Minn., to Duluth, Minn., via interstate route. Roofing felt and building paper, 199.
- Minneapolis, Minn., to Minnesota and Wisconsin, milled and forwarded to New York and other eastern points, through Milwaukee. Wheat, lake-and-rail, 338.
- Minneapolis, Minn., to Missouri River cities, and points east and west thereof. Agricultural implements, 481.
- Minneapolis, Minn., from Scranton, Williamsport, and Northumberland groups, Pa. Class and commodity rates, 182.
- Minnesota to Benld, Ill., Brooten, Minn., and points in North Dakota. Posts and poles, 415.
- Minnesota from Chicago, Ill., and Mississippi River crossings. Heating apparatus, 481 (495).
- Minnesota to and from Chicago and Peoria, Ill. Grapes, 481 (493).
- Minnesota from Minneapolis, milled and forwarded to New York and other eastern points, through Milwaukee. Wheat, lake-and-rail, 338.
- Minnesota to official classification territory. Potatoes; car fitting, 545.
- Minnesota from Snyders, Wis. Lumber, lath, poles, and shingles, 243.
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- Mishawaka, Ind., to Ohio and Mississippi river crossings, destined to southern territory. Proportional rates; fourth section, 458.
- Mississippi to Alabama, Georgia, Louisiana, North Carolina, South Carolina, and other points south of the Ohio River. Lumber and forest products, 268.
- Mississippi from Missouri, via Cairo, Ill., and Memphis, Tenn. Grain and grain products, 737.
- Mississippi from Toledo and other points in Ohio, and Detroit and other points in Michigan and Indiana. Class rates, 446.
- Mississippi to various destinations. Fruits and vegetables, 291.
- Mississippi River, points on and east of, from Florida. Citrus fruits, 595.
- Mississippi River, points east of, from Crossett, Ark. Wooden silos, 500.
- Mississippi River, points east of, from Texas. Vegetables, 695.
- Mississippi River to and from Illinois, C. F. A., and western trunk line territories. Class and commodity rates; through routes and joint rates, 588.
- Mississippi River to Missouri River cities, and points east and west thereof. Burlap press cloth, 481.
- Mississippi River cities to and from St. Paul and Minneapolis, Minn., Missouri River cities, and interior Iowa and Missouri cities. Building material, acids, cooperage, and toilet paper, 481.
- Mississippi River crossings from Arkansas City, Ark., for beyond. Lumber, 423.
- Mississippi River crossings from Indiana, Illinois, and Michigan, destined to southern territory. Proportional rates, 458.
- Mississippi River crossings to Kansas City, Mo., and other Missouri River cities, Des Moines and other interior Iowa cities, and points in Minnesota, Missouri, and Iowa. Asphalt, asphaltum, and heating apparatus, 481.
- Mississippi River crossings from Kansas and Nebraska. Dairy products, 700.
- Mississippi Valley territory from Memphis, Tenn., Henderson, Ky., and Evansville, Ind., originating in Illinois. Grain and grain products, 378.
- Missouri from Arkansas and Missouri. Chair stock, 13.
- Missouri from Chicago, Ill., and Mississippi River crossings. Heating apparatus, 481 (495).
- Missouri to and from Chicago and Peoria, Ill., and Mississippi River cities. Cooperage, 481 (492).
- Missouri from Illinois mines. Bituminous coal, 412, 749.
- Missouri to and from Illinois, Missouri, and Wisconsin. Wall board, 189.
- Missouri to Illinois, Missouri, Indiana, Ohio, Pennsylvania, Michigan, and Wisconsin. Chair stock, 13.
- Missouri from Indiana. Lumber, 117.
- Missouri to Mississippi and Louisiana, via Cairo, Ill., and Memphis, Tenn. Grain and grain products, 737.
- Missouri to Ohio River crossings. Proportional rates, 458.
- Missouri from Plasterco, Tex. Cement plaster, 615.
- Missouri to various destinations. Fruits, vegetables, potatoes, watermelons, cantaloupes, and muskmelons, 291.
- Missouri River cities from Chicago, Ill., Mississippi River crossings, and St. Paul and Minneapolis, Minn. Asphalt, asphaltum, soda, soda products, burlap press cloth, cooperage, and agricultural implements, 481.
- Missouri River cities to and from Chicago, Ill., and Mississippi River cities. Toilet and wrapping paper, and building material, 481.
- Missouri River territory to Montana. Dairy products, 700.
- Mobile, Ala., to Chicago, Peoria, and Pekin, Ill., Milwaukee, Wis., and Hammond, Ind. Blackstrap molasses, 567.
- Mobile, Ala., from Fort Worth, Tex., destined to Cuba. Dressed poultry, 700.

- Mobile, Ala., to Grand Island and Hastings, Nebr.** Bananas, 353.
Mobile, Ala., from Vicksburg, Miss. Grain; fourth section, 662.
Moji, Japan, from Chicago, Ill., Pittsburgh, Pa., etc., via Pacific coast terminals.
 Iron and steel, 129.
Moline, Mich., to Grand Rapids, Mich. Wheat, 75.
Monroe, La., to Oak Cliff, Tex. Rough staves and heading, 241.
Monroe, La., to Texarkana, Ark.-Tex. Molasses, 85.
Montana from Missouri River territory. Dairy products, 700.
Montana to various destinations. Fruit, refrigeration, 102.
Montana from Washington and Idaho. Cedar posts and poles, 59.
Montgomery, Ala. Concentration of cotton, 197.
Montgomery, Ala., from Grand Rapids, Mich. Flour, 75.
Montgomery, Ala., to Pensacola, Fla. Croesties, 633.
Montreal, Quebec, from Sergeant, Pa. Rough rolled glass, 622.
Moorefield, Ind., to Indiana, via Cincinnati, Ohio. Grain, grain products, and hay, 113.
Morris, Ill., to Milwaukee, Watertown, and Madison, Wis., St. Louis, Mo., and East St. Louis, Ill. Wall board, 189.
Morton, Ky., to Nashville, Tenn. Coal, 366.
Mound, La., from Kennett, Mo. Logging-car bodies, 73.
Mystic, Conn., to and from Westerly, R. I. Passenger fares, 164.
Nagasaki, Japan, from Chicago, Ill., Pittsburgh, Pa., etc., via Pacific coast terminals.
 Iron and steel, 129.
Napanee, Ind., to various destinations. Silo staves and rafters, 236.
Naraviss, N. Mex., from Hutchinson, Kans. Class rates, 689.
Narrows, Ky., from Richey, Miss. Gum lumber, 154.
Nashville, Tenn., from Kentucky mines. Coal, 366.
Nashville, Tenn., from Louisville and Newport, Ky. Molding sand, 108.
Nashville, Tenn., from southern and southwestern territories. Fruits and vegetables, 291.
Natchez, Miss., from Missouri. Grain and grain products, 737.
Nebraska to eastern territory, and points in Montana. Dairy products, 700.
Nebraska to and from Omaha, Nebr. Charges for cleaning and disinfecting cars carrying live stock, 755.
Nettleton, Ark., to Oak Cliff, Tex. Rough staves and heading, 241.
New England from Clearfield district, Pa. Bituminous coal, 654.
New England to Duluth and St. Paul, Minn. Rail-and-lake rates, 162.
New England from Maine and eastern Canada. Lumber and lumber products, 641.
New England to and from New York, N. Y. Proportional rates, 203.
New England from New York and Vermont. Milk, cream, buttermilk, condensed milk, and pot cheese, 375.
New Haven, Conn., from East Ryegate, Vt. Paper, 50.
New Haven, Conn., from Maine and eastern Canada. Lumber and lumber products, 641.
New Jersey from Clearfield district, Pa. Bituminous coal, 654.
New Jersey from Tennessee. Barytes, 334.
New London, Conn., to and from New York, N. Y. Proportional rates, 203.
New Mexico from Hutchinson, Kans. Class rates, 689.
New Mexico to Texas, Oklahoma, and Louisiana. Coke, 681.
New Mexico mines to Texas, Oklahoma, and Louisiana. Coal, 681.
New Orleans, La. Absorption of drayage charges, 472.
New Orleans, La., to Arkansas, and Texarkana, Ark.-Tex. Molasses, 85.
New Orleans, La., from Chattanooga, Tenn. Sawmill machinery; fourth section, 54.
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- New Orleans, La., to Chicago, Peoria, and Pekin, Ill., Milwaukee, Wis., and Hammond, Ind. Blackstrap molasses, 567.
- New Orleans, La., from Fort Worth, Tex., destined to Cuba. Dressed poultry, 700.
- New Orleans, La., to Grand Island and Hastings, Nebr. Bananas, 353.
- New Orleans, La., to and from points on the Mississippi River. Class and commodity rates; through routes and joint rates, 588.
- New Orleans, La., from Missouri. Grain and grain products, 737.
- New Orleans, La., to and from New York, N. Y., and Havana, Cuba. Boat lines, 168.
- New Orleans, La., to Pocatello, Idaho. Bananas, 149.
- New York from Clearfield district, Pa. Bituminous coal, 654.
- New York to Duluth and St. Paul, Minn. Rail-and-lake rates, 162.
- New York from Maine and eastern Canada. Lumber and lumber products, 641.
- New York to New England. Milk, cream, buttermilk, condensed milk, and pot cheese, 375.
- New York from Odanah, Wis. Lumber, 215.
- New York from Tennessee. Barytes, 334.
- New York to various destinations. Salt; car fitting, 276.
- New York, N. Y. Hay, embargo, 281.
- New York, N. Y., to and from Galveston, Tex., and New Orleans, La. Boat lines, 168.
- New York, N. Y., from Kannapolis and Concord, N. C. Cotton towels, 625.
- New York, N. Y., from Lake Superior ports. Wheat, lake-and-rail, 338.
- New York, N. Y., from Minneapolis, Minn., milled at Minnesota and Wisconsin mills, and forwarded through Milwaukee. Wheat, lake-and-rail, 338.
- New York, N. Y., to and from Rhode Island. Class and commodity rates, 417.
- New York, N. Y., from Seabrook, S. C. Potatoes, 186.
- New York, N. Y., from South Deerfield and Hatfield, Mass. Onions, 435.
- New York, N. Y., to and from southeastern New England. Proportional rates, 203.
- Newburg Junction, Canada, to Norfolk, Va. Hay, 151.
- Newcastle, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Newman, N. Mex., from Hutchinson, Kans. Class rates, 689.
- Newport, Ky., to Nashville, Tenn. Molding sand, 108.
- Niblock, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Nicholasville, Ky., from Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo. Petroleum and products, 35.
- Nichols, F a., from north Atlantic ports, via Port Tampa, Fla. Coal, 231.
- Nivac, Tex., to El Paso, Tex., destined to Pearson, Mexico. Pine ties, 753.
- Norfolk, Va., from Canada. Hay, 151.
- North Atlantic ports from Kannapolis and Concord, N. C. Cotton towels, 625.
- North Atlantic ports to Port Tampa, Fla., destined to other Florida points. Coal, 231.
- North Branch, Minn., to official classification territory. Potatoes; car fitting, 545.
- North Carolina from Cybur and other Mississippi points. Lumber and forest products, 268.
- North Dakota from Minnesota. Posts and poles, 415.
- North Dakota from Snyders, Wis. Lumber, lath, poles, and shingles, 243.
- North Dakota from Washington and Idaho. Cedar posts and lumber, 59.
- North Fort Worth, Tex., to Kiefer, Okla. Gasoline and naphtha, 757.
- Northbridge, Mass., from East Ryegate, Vt. Paper, 50.
- Northumberland group, Pa., to Lake Michigan and Lake Superior ports, and St. Paul and Minneapolis, Minn. Class and commodity rates, 182.
- Northwestern territory to Melrose, Osakis, and Janesville, Minn., Huron and Watertown, S. Dak., and Lidgerwood, N. Dak. Grain, 741.
- Oak Cliff, Tex., from Arkansas and Louisiana. Rough staves and heading, 241.
- Oakdale, La., from St. Louis, Mo. Bacon, 78.

- Odanah, Wis., to Michigan, Indiana, Ohio, Pennsylvania, West Virginia, Kentucky, and New York. Lumber, 215.
- Official classification territory. Transportation of dressed poultry, butter, eggs, and cheese within, in refrigerator cars, 392.
- Official classification territory, to and from points in. Core compound and foundry flour, 734.
- Official classification territory from Minnesota. Potatoes; car fitting, 545.
- Official classification territory from Philadelphia, Pa. Chain hoists; classification, 729.
- Ohio from Macon, Ga., and other points in southeastern territory. Cotton piece goods, 530.
- Ohio from Michigan. Wrapping and printing paper, 16.
- Ohio from Missouri and Arkansas. Chair stock, 13.
- Ohio from Odanah, Wis. Lumber, 215.
- Ohio to southeastern territory. Class rates, 446.
- Ohio River, points north of, from Falco, Ala. Yellow-pine lumber, 581.
- Ohio River, points north of, from Texas. Vegetables, 695.
- Ohio River, points on and north of, from southern and southwestern territories. Fruits and vegetables, 291.
- Ohio River, points on and south of, from Florida. Citrus fruits, 595.
- Ohio River, points south of, from Crossett, Ark. Wooden silos, 500.
- Ohio River, points south of, from Cybur, Miss. Lumber and forest products, 268.
- Ohio River, points south of, from Grand Rapids, Mich. Flour, 75.
- Ohio River crossings from Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin. Proportional rates, 458.
- Ohio River crossings from Indiana, Illinois, and Michigan, destined to southern territory. Proportional rates, 458.
- Ohio River crossings from Milwaukee, Wis., and Chicago, Ill. Wall board, 189.
- Ohio River crossings from Toledo, Ohio. Vehicles, 111.
- Okahumpka, Fla., from north Atlantic ports, via Port Tampa, Fla. Coal, 231.
- Oklahoma from Hutchinson, Kans. Class rates, 689.
- Oklahoma from New Mexico and Colorado. Coal and coke, 681.
- Oklahoma to Omaha, Nebr. Petroleum fuel oil, 515.
- Oklahoma from Plasterco, Tex. Cement plaster, 615.
- Oklahoma to various destinations. Fruits, vegetables, potatoes, watermelons, cantaloupes, and muskmelons, 291.
- Okmulgee, Okla., to Crystal City, Mo. Fuel oil, 71.
- Olney, Tex., from New Mexico and Colorado. Coal and coke, 681.
- Omaha, Nebr., from Coffeyville, Kans. Petroleum and products, 98.
- Omaha, Nebr., from Kansas and Oklahoma. Petroleum fuel oil, 515.
- Omaha, Nebr., from Kearney, Nebr., via interstate route. Alfalfa meal, 264.
- Omaha, Nebr., to Memphis, Tenn. Candy, 481 (491).
- Omaha, Nebr., to and from other points in Nebraska. Charges for cleaning and disinfecting cars carrying live stock, 755.
- Omlee, N. Mex., from Hutchinson, Kans. Class rates, 689.
- Onycha, Ala., to Pensacola, Fla. Crossties, 633.
- Oregon to Los Angeles, Cal. Cattle, calves, sheep, goats, and hogs, 247.
- Oregon to various destinations. Fruit, refrigeration, 102.
- Oregon, Ill., to Silica, Ohio, ground and shipped to Zanesville, Ohio. Glass sand, 63.
- Orient from Chicago, Ill., Pittsburgh, Pa., etc., via Pacific coast terminals. Iron and steel, 129.
- Orogrande, N. Mex., from Hutchinson, Kans. Class rates, 689.
- Orrville, Ohio, from southeastern territory. Cotton piece goods, 530.
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- Orth, Tex., from New Mexico and Colorado. Coal and coke, 681.
 Osakis, Minn., from northwestern territory. Grain, 741.
 Oshkosh, Wis., from Dubuque, Iowa. Grapes, 481.
 Ottumwa, Iowa, from Kokomo, Ind. Heating stoves, 79.
 Pacific coast to Michigan. Lumber, 441.
 Pacific coast terminals from Chicago, Ill., Pittsburgh, Pa., etc., for export to the Orient. Iron and steel, 129.
 Paducah, Ky., from Arkansas and Louisiana, via Memphis, Tenn. Lumber products, 537.
 Palmer, Mass., to and from New York, N. Y. Proportional rates, 203.
 Palmerton, Pa., from Tennessee. Barytes, 334.
 Paoli, Colo., from California. Lumber, 687.
 Paris, Ky., from Louisville, Ky., Cincinnati, Ohio, and St. Louis, Mo. Petroleum and products, 35.
 Parksley, Va., to Bushwick station, Brooklyn, N. Y. Potatoes, 67.
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Fruits and vegetables: Upon investigation of increased rates and changes in rules applicable to the transportation of domestic fresh fruits, vegetables, and melons from southern and southwestern territory, *Held*, Rates and changes in rules justified in part. Fruits and Vegetables, 291 (332-333).

ADVANCE IN RATES—Continued.

- Gasoline and petroleum products: Proposed rates on gasoline via two lines and on petroleum and products via a third line from Coffeyville, Kans., to Kansas City and Sugar Creek, Mo., and petroleum and products via all lines from Coffeyville to Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, applicable on shipments originating at Delaware, Okla., found not justified. Gasoline from Coffeyville, Kans. 98 (101).
- Grain and hay: Cancellation of joint rates on grain, grain products, and hay from Indianapolis, Ind., etc., via Cincinnati, Ohio, to certain Indiana points, rendering applicable higher combination of intermediate rates, justified. Grain from Indianapolis, Ind. 113.
- Grain and products: Proposed cancellation of joint through rail-lake-and-rail commodity rates on products and by-products of grain from Argo, Ill., to various destinations east of Buffalo rendering applicable combination charges, not justified, except as to glucose. Grain and Grain Products from Argo, Ill. 359.
- Grain and products: Cancellation of joint rates to Jackson, Meridian, Natchez, and Vicksburg, Miss., Baton Rouge, New Orleans, Port Chalmette, and Slidell, La., on grain and products from points in southeastern Missouri on the I. M., by way of Cairo and Memphis, and the I. C. and Y. & M. V. railroads, rendering applicable higher combination rates, found justified. Grain from Missouri Points, 737 (740).
- Grain by-products: Increased rates on grain by-products from Peoria, Ill., to points in C. F. A. territory, during period in question, found not to have been justified. Reparation awarded. *American Milling Co. v. A., T. & S. F. Ry. Co.* 431 (434).
- Grain products: Increased through charges on grain products and by-products, both domestic and export, from points in the Chicago switching district via the Lehigh Valley Transportation Company to points east of Buffalo, N. Y., not justified. Grain Products Rates via Great Lakes, 550 (555).
- Grain products: Increased through charges from points in the Chicago and Milwaukee switching districts resulting from the refusal of the Great Lakes Transit Corp. to absorb switching charges, and from the initial rates established by the latter carrier from its docks, not shown unreasonable. *Id.* (558.)
- Iron and steel: Proposed increased commodity rates on, from Chicago, Ill., Pittsburgh, Pa., etc., to Pacific coast terminals for export, justified. *Western Export Iron and Steel Case*, 129.
- Iron and steel articles: Increases in export rates on, from C. F. A. and trunk line territories to Atlantic ports and from points in C. F. A. territory to Gulf ports not justified as a whole, but carriers authorized to apply present domestic rates on export traffic from Pittsburgh to the Atlantic ports, provided Chicago, Cincinnati, etc., are given rates to the seaboard properly adjusted thereto. *Eastern Export Iron and Steel Case*, 5.
- Lumber: Proposed increased rates from Rockport group, in the state of Indiana, to C. F. A. territory found justified. Lumber from Indiana Stations, 117 (120).
- Lumber: Proposed increased rates from Arkansas City, Ark., to Mississippi River crossings, Memphis, Tenn., to St. Louis, Mo., inclusive, and to Cairo, Ill., for beyond, found justified. Lumber from Arkansas City, Ark., 423.

ADVANCE IN RATES—Continued.

- Lumber:** Increased rates from Falco, Ala., to various destinations found unreasonable to the extent that they exceeded by more than 2 cents the rates from Galliver, Fla., the junction point. Reparation awarded. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.* 581 (587).
- Lumber:** Propriety of proposed increased rates on lumber and articles taking the lumber rates from points in Maine and eastern Canada to destinations in central and southern New England and eastern New York, established. *New England Lumber Rates*, (No. 2), 641 (653).
- Lumber:** Proposed increased rates on lumber from California points to points in Colorado on the C., B. & Q. R. R. east of Brush and Sterling, Colo., found not justified. *Lumber to Eastern Colorado*, 687 (688).
- Molasses:** Increased carload rates on molasses from New Orleans and Monroe, La., to Texarkana, Ark.-Tex., and other points, found justified. Increased rates from New Orleans and points on the T. & P. Ry. to intermediate local points south of Texarkana found to be in violation of fourth section. *Molasses from Texas and Louisiana* (No. 2), 85 (88).
- Oil:** Rates on petroleum fuel oil from Kansas and Oklahoma refineries to Omaha, Nebr., increased since January 1, 1910, found not to be justified. Reasonable rates prescribed and reparation awarded. *Fairmont Creamery Co. v. A., T. & S. F. Ry. Co.* 515 (519).
- Oysters:** Increased charges for refrigeration of carload shipments of oysters in the shell and less than carload shipments of shucked oysters from the Atlantic seaboard to certain western points found justified on rehearing. *Platts v. N. Y., N. H. & H. R. R. Co.* 504 (509).
- Petroleum:** Increased rates from Louisville, Ky., applicable on interstate traffic, from Cincinnati, Ohio, St. Louis, Mo., and other points to stations in Kentucky, found justified. *Petroleum to Kentucky Stations*, 35 (44).
- Plaster, cement:** Proposed increased rates on cement plaster and commodities taking same rates from Plasterco, Tex., to St. L. & S. F. stations in Oklahoma, Kansas, Missouri, and Arkansas, and to Memphis, Tenn., found not justified. *Cement-Plaster from Plasterco, Tex.*, 615 (618).
- Rice:** Increased rates on clean rice from Texas, Louisiana, and Arkansas points to Memphis, Tenn., and interstate between points in Arkansas, Louisiana, and Texas, justified. Increased rates on rough rice justified in part. *Rice from Texas and Louisiana*, (No. 2), 29 (31).
- Rice:** Increased proportional rates on clean and rough rice from points in Arkansas and Louisiana to Memphis, when destined to points in southeastern territory, except those taking Ohio River rates, or related rates, not justified. *Id.* (31).
- Rice:** Increased rail and water rates on clean rice from Texas to points in seaboard territory, except southeastern territory, justified. *Id.* (34).
- Rice:** Increased rates on clean rice from Texas and Louisiana ports for export or coastwise movement found justified. *Id.* (34).
- Rice products:** Increased rates on rice products between points in Arkansas, Louisiana, and Texas, and increased rail-and-water rates from Texas points to seaboard territory, found not justified. *Id.* 29 (34).
- Sand:** Increased rates on molding sand in carloads from Louisville and Newport, Ky., to Nashville, Tenn., found justified in part. *Molding Sand to Nashville, Tenn.*, 108 (111).

ADVANCE IN RATES—Continued.

Sand: Proposed increased rates on sand and black dirt from Dock Siding, Gary, McCools, Miller, and Willow Creek, Ind., to points within the Chicago switching limits which are stated to be the increase authorized by the *Five Per Cent Case*, but were not published earlier on account of clerical error, found not justified. Sand from Indiana Stations, 619 (621).

Vehicles: Proposed cancellation of proportional commodity rates from Toledo, Ohio, to Ohio River crossings and Virginia cities, resulting in increased rates to points in the south, found not justified. Vehicles from Toledo, Ohio. 111

Wall board: Proposed increased rates on wall board in C. F. A. territory, and from and to certain Illinois, Wisconsin, and Missouri points, and from Indianapolis, Milwaukee, and Chicago, to Ohio River Crossings, and Bristol, Va.-Tenn., etc., found not justified. Wall Board Rating, 189.

AGGREGATE OF INTERMEDIATES. See Through and Local.

ALLOWANCES.

Car fitting: Carriers upon request were permitted to pursue the same course for making allowances for inside doors on bulk shipments moving interstate as made on intrastate shipments in accordance with the rulings of the Public Service Commission of New York. Discontinuance of such allowances not found unreasonable. *Sterling Salt Co. v. P. R. R. Co.* 276 (279, 280).

Shippers: Discontinuance of allowances to shippers for inside-door protection for shipments of bulk salt not found unreasonable. Practices of the defendants and other carriers in this regard should be harmonized upon a practicable and equitable basis. *Id.* (280).

ALTERNATIVE ROUTE.

In the absence of proof of damage to the shipper, an incidental contravention of the long-and-short-haul rule of the fourth section over an alternative route does not of itself afford a sufficient basis for an award of reparation. *La Crosse Shippers' Asso. v. C., I. & L. Ry. Co.* 520 (524).

ANALOGOUS ARTICLES.

Rates on wheat and flour are sometimes the same as those on coarse grain and grain products, but it can not be said that they must necessarily be the same. *Green v. A. & V. Ry. Co.* 662 (664):

Coke, in carloads, generally takes the same rates as coal, in carloads, from and to points involved. Coal and Coke from New Mexico Points, 681.

The general circumstances and conditions surrounding the physical movement of dairy products and fresh meats, are similar, and other factors usually regarded in rate making are not sufficiently dissimilar to render unfeasible or improper a differential relationship of rates. Rates on Dairy Products, 700 (719).

Although chain hoists and pulley or tackle blocks serve the same general purpose, they are not, strictly speaking, competitive, as the former are designed and used for the elevating of loads beyond the capacity of the latter. *Industrial Traffic Asso. v. B. & O. R. R. Co.* 729 (731).

ANNUAL REPORT.

Proceeding discussed in. *R. R. Comm. of La. v. A. H. T. Ry. Co.* 45 (47-48).

ANY-QUANTITY RATES.

Proposed increased joint rates, any quantity, on cotton goods from southeastern points to C. F. A. territory, other than Chicago and Chicago rate territory, found not justified. Southeastern Cotton Goods, 530.

ARBITRARIES.

As prescribed distance scale is substituted for the present class rates between Memphis and certain Arkansas points, which include a bridge arbitrary and apply over one, two, and three lines, no arbitraries will be allowed where the haul is over two or more lines and no allowance for this bridge haul. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (124).

Rates charged on lumber from Falco, Ala., to destinations north of the Ohio River found unreasonable and prejudicial to the extent that they exceed by more than 2 cents the rates from Galliver, Fla., the junction point. Reparation awarded. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.* 581 (584).

Rates to points on the New Haven are constructed by adding certain factors, based on mileage to the junction points, and as the propriety of the through rates are only in issue the amount of such arbitraries can not be regarded. *New England Lumber Rates (No. 2)*, 641 (645, 646).

ASSIGNEE.

Claim brought by. *Rudiger v. I. C. R. R. Co.* 149.

AVERAGES.

Average loading and car-mile earning on shipments of fresh meats, packing-house products, etc., in C. F. A. territory, shown. *Peddler Car Minimum*, 139 (141).

Average loading and cost of icing oysters and perishable commodities moving under refrigeration shown. *Platts v. N. Y., N. H. & H. R. R. Co.* 504 (509).

BACK HAUL.

Involved on shipments of wheat from Michigan and Indiana points to points south of the Ohio River, milled at Grand Rapids. *Valley City Milling Co. v. G. R. & I. Ry. Co.* 75 (76).

Charges on shipment of coal from Du Quoin, Ill., to Cape Girardeau, Mo., reconsigned to Gideon, Mo., which involved a back haul, found unreasonable and reparation awarded. *Graves Coal & Coke Co. v. St. L. & S. F. R. R. Co.* 579 (580).

BAGGAGE.

Contention that having paid double fare for use of drawing room that 225 pounds of baggage should have been transported free of charge, not sustained as proper parties are not parties to proceeding. *Carter v. M., St. P. & S. S. M. Ry. Co.* 51 (52).

BARGE LINE. See Boat Line.

BASING-POINT SYSTEM.

The basing-point system of rates, so generally employed by carriers in the territory south of the Ohio and Potomac and east of the Mississippi rivers, under which rates to the basing points were lower than to intermediate points on the same lines, was condemned by the fourth section of the original act. *Green v. A. & V. Ry. Co.* 662 (677).

BASIS OF RATES.

Rate structures on traffic eastbound and westbound are constructed upon entirely different bases. *Eastern Export Iron and Steel Case*, 5 (9).

Rates on coal from mines in southern Illinois to points in Missouri are usually based on proportional rates to East St. Louis, Ill., the charge for crossing the bridge to St. Louis, and local rates beyond St. Louis. *Big Muddy Coal & Iron Co. v. I. C. R. R. Co.* 157 (159).

Owing to differing competitive conditions, the rates between Atlantic seaboard territory and New Orleans are constructed on an entirely different basis from the rates between this territory and Galveston. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (175).

BILLS OF LADING. *See also* Through Bills of Lading; Export Bills of Lading.

Practice of defendants in refusing to issue through bills of lading on shipments of forest products originating in certain territory, while continuing to issue such bills of lading on export shipments of the same commodities originating in other territory, not shown unreasonable. *Evans Lumber Co. v. C. of G. Ry. Co.* 476 (480).

BLANKET RATES.

As blanket basis does not apply to rates from Falco, Ala., to destinations north of Ohio River, it is held that for the future rates will be unduly prejudicial to complainants to the extent that they exceed the blanket basis of rates from Galliver, Fla., the junction point, to the same destinations. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.* 581 (587).

BOAT LINES.

The S. P. Co. does or may compete with its Atlantic S. S. lines operating between Galveston and New York and between New Orleans and New York for through transcontinental traffic. *S. P. Co.'s Ownership of Atlantic S. S. Lines*, 168 (171).

The S. P. Co. does not and may not compete for any traffic with its Atlantic S. S. lines operating between New Orleans and Havana, Cuba. *Id.* (171).

Upon rehearing, *Held*, The existing service by water of the Canada Atlantic Transit Co. is being operated in the interest of the public and is of advantage to the convenience and commerce of the people and that an extension thereof will neither exclude, prevent, nor reduce competition on the route by water here under consideration. *Application of the G. T. Ry. Co. of Canada*, 286 (290).

Proposed increased rail-and-lake rates from C. F. A. points to Lake Superior ports via the Northwestern Steamship Co. and to Lake Huron ports via the Detroit & Cleveland Nav. Co., found justified. *Ohio Rail and Lake*, 525 (528, 529).

Increased through charges on grain products both domestic and export from points in the Chicago switching district via the Lehigh Valley Transp. Co. to points east of Buffalo, N. Y., not justified. *Grain Products Rates via Great Lakes*, 550 (555).

Increased through charges from points in the Chicago and Milwaukee switching districts resulting from the refusal of the Great Lakes Transit Corp. to absorb switching charges, and from the initial rates established by the latter carrier from its docks, not shown unreasonable. *Id.* (558).

Defendants required to establish through routes and joint rates with Inland Nav. Co., a barge line on the Mississippi River between St. Louis and Memphis and New Orleans, no higher than those participated in, on traffic routed all-rail via St. Louis or East St. Louis between the same points. *Inland Nav. Co. v. W. Ry. Co.* 588 (594).

BOATS.

Because of scarcity of bottoms and the consequent increase in the rates by water from Stockton harbor to points on Long Island Sound, the present rates on lumber from points on the B. & A. are lower than the rail-and-water rates. *New England Lumber Rates (No. 2)*, 641 (644).

BOTH DIRECTIONS.

Rate charged on certain shipments of printing paper from Franklin, N. H., to Augusta, Me., found to have been unreasonable to extent they exceeded rate in opposite direction. Reparation awarded. *International Paper Co. v. M. C. R. R. Co.* 159 (161).

BOTH DIRECTIONS—Continued.

Under similar circumstances and conditions the rates in opposite directions should be the same, but under conditions here shown rates not found unreasonable. *Cadillac Lumber Exchange v. A. A. R. R. Co.* 636 (639).

"BOTTOMS." See Boats.

BRANCH LINES.

Rates on cedar posts and lumber from points in Washington and Idaho to points on the Plentywood and Snowden branches of the G. N. Ry. in eastern Montana and to Alexander, N. Dak., also on a branch line, not found unreasonable but was unjustly discriminatory, which discrimination has been removed. *Sand Point Lumber & Pole Co. v. G. N. Ry. Co.* 59-61.

Carriers may make an additional charge for branch-line service. *Chaney Co. (Ltd.) v. O. S. L. R. R. Co.* 420 (421).

BREAKAGE.

Breakage of eggs is avoided more and more each year as a result of better methods and greater care in packing and loading. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (404).

BREAKING RATES.

The breaking up of a rate for transportation into separate rates or charges for the individual services incident to the transportation is merely a different way of stating the former rate. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (397).

BRIDGE TOLLS.

Bridge tolls not shown to be unreasonable. Carriers may use these arbitraries in removing the discrimination against Memphis. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (126).

The conditional and unconditional import rates from Gulf ports to St. Louis include allowance for bridge toll, which is absorbed by the lines to St. Louis. *Scully Syrup Co. v. A. G. S. R. R. Co.* 567 (569).

BURDEN OF PROOF.

Rates under attack are initial rates, not increased rates, and do not come within the purview of section 15 as to the burden of justifying their reasonableness; because the tariff included joint rates with rail carriers the burden of proving their reasonableness is not upon the Great Lakes Transit Corporation or upon the rail carriers concurring in such rates. *Bay State Milling Co. v. G. L. T. Corp.* 338 (347).

Contention that in the amendment to section 15, casting upon carrier the burden of proof to justify rates increased after January 1, 1910, the word "rate" is used restrictively and included only the cost of carriage, and not "charges" for services other than of carriage, need not be decided. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (397).

Burden of proof is on carriers defendant to show that increased rates are just and reasonable, while burden is on complainant in regard to rates prior to increase. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.* 581 (584).

CANADA.

Charges collected on shipments of hay from points in Canada to Norfolk, Va., lightered in New York, on rehearing, found unreasonable and reparation awarded. *Cruikshank & Robinson v. P. R. R. Co.* 151 (153).

Conclusion announced in previous report that Commission has no jurisdiction over joint through express rates from points in the Dominion of Canada to Buffalo, N. Y., adhered to on rehearing. *Fairmont Creamery Co. v. A. E. Co.* 724.

CANCELLATION. *See also* Advance in Rates; Joint Rates; Through Routes and Joint Rates.

Cancellation of joint commodity express rates on fruits and vegetables, in carloads, from certain Washington points to points in other states, through Spokane, Wash., not justified. *Davies Spur, Wash., Express Rates*, 143 (146).

No justification for cancellation of proportional rates between New York, N. Y., and points in southeastern New England, applicable on traffic handled south of New York by coastwise steamship lines. *Boston-New York Proportional Rates (No. 2.)*, 203 (212).

Where the effect of a proposed cancellation is equivalent to increasing the total charge for transportation, and where that charge has been in effect prior to January 1, 1910, the carriers responsible for the proposed increased rates are required to show the proposed increased rates just and reasonable. *Grain and Grain Products from Argo, Ill.* 359.

Proposed cancellation of joint rates on lumber and other forest products from Pacific coast points on the G. N. Ry., the N. P. Ry., and connecting lines to destinations in Michigan on the Copper Range R. R., found not justified. *Calumet, Mich., Lumber*, 441.

CAPACITY.

It is estimated that fruits and vegetables are loaded to about 33 per cent of the car capacity and that the tare weight of the cars in which they move averages about 83 per cent of the gross weight, as against 43 per cent of ordinary freight. *Fruits and Vegetables*, 291 (299).

If cars will not carry the minimum prescribed a provision should be inserted in tariffs to the effect that the capacity of the car shall govern. *Milk and Cream Investigation*, 375 (377).

CAR DISTRIBUTION.

Nothing in record to show that the distribution of cars to coal mines is fairly comparable to the allotment of space in a hay warehouse. *New York Hay Exchange Assn. v. N. Y. C. R. R. Co.* 281 (284).

CAR FITTING.

There is nothing of record to indicate that the cost of special protection for bulk salt is included in the rate charged, therefore complainants are not entitled to compensation for furnishing inside door protection. *Sterling Salt Co. v. P. R. R. Co.* 276 (278, 279).

CAR FURNISHING.

Tariff should provide that, if a double-deck car is ordered and in lieu thereof two single-deck cars are furnished they may be used at the rate and minimum weight applicable to the double-deck car, provided a period of two days, exclusive of day of notice, is allowed in which to furnish the car ordered. *Swift & Co. v. C., B. & Q. R. R. Co.* 56 (58).

Allegation that defendant failed or refused to furnish cars to complainants of the capacity desired, upon a reasonable request therefor, not sustained. *Cottrell v. C., T. H. & S. E. Ry. Co.* 195.

It is respondents' duty to furnish, upon reasonable request, cars which will accommodate the prescribed minimum weights or other cars which can be used upon the same basis. *Carload Minimums*, 259 (261).

Respondents object to the establishment of a carload minimum or rule which will give to shipper the right to order small cars, and in event of carrier's inability to promptly furnish a small car the right to use a larger car on the basis of the minimum prescribed for the smaller car. *Held*, It is not reasonable to suppose these shippers wish to wait five or six days for a car of a particular size. *Northern Potato Traffic Assn. v. B. & O. R. R. Co.* 545 (548-549).

CAR SHORTAGE.

Contention of P. R. R. that to extend the Clearfield district rates to mines on the Johnstown & Stony Creek would unduly prefer such mines to the extent that they would have double outlets and excessive car supply during times of shortage, not sustained, as trunk lines may not be permitted to continue discriminatory practices upon the alleged fear that the correction would lead them into other violations of law. *Johnstown, Pa., Switching*, 654 (658).

CAR-MILE EARNINGS. *See also* Averages; Earnings; Ton-Mile Revenue.

Live Stock: Average car-mile earnings shown on hogs, cattle, and sheep from Utah, Idaho, and Oregon. *American National Live Stock Asso. v. O. S. L. R. R. Co.* 247 (249).

Lumber: Table showing the distances and earnings per car-mile on lumber from Vanceboro, Harmony, and Deadwater, Maine, to points in New England and New York. *New England Lumber Rates* (No. 2), 641 (649).

Oysters: A comparison of the car-mile earnings in rehearing shows that the revenue derived from the transportation of oysters in the shell are even lower than the earnings found in original report derived from transportation of shucked oysters. *Platts v. N. Y., N. H. & H. R. R. Co.* 504 (507).

CARETAKER.

Third-class rates on live poultry include the transportation of a caretaker; while no passenger transportation is furnished in connection with dressed poultry. *Rates on Dairy Products*, 700 (711).

CARLOAD AND LESS-THAN-CARLOAD.

Carriers' tariff rules should clearly indicate that the charge for a l. c. l. shipment shall not exceed the charge for a minimum carload of same freight at class of commodity rate applicable thereto. *Wheland Co. v. A. G. S. R. R. Co.* 53 (54).

C. & N. W. tariff named per car rate on horses from South Omaha, Nebr., to Wausau, Wis., in connection with the C., St. P., M. & O. Concurrence of latter line was limited to traffic originating or terminating on its line. Higher combination rate charged on shipments involved. *Held*, The per car rate was displayed to the public as unrestricted and reparation awarded. *Healy & Towle v. C. & N. W. Ry. Co.* 83.

Charges on shipments of silo staves and rafters, c. l. and l. c. l., from Napanee, Ind., to various destinations found unreasonable to extent they exceeded rating maintained on lumber of the kind from which they were made. Reparation awarded on l. c. l. shipments. *Napanee Lumber & Mfg. Co. v. B. & O. S. W. R. R. Co.* 236 (239).

Proposed change in rule of western classification which provides for the assessment of loading and unloading charges of 1½ cents per 100 pounds on l. c. l. shipments transported at c. l. rates to the basis of assessing charges based on the carload minimum weights, found not justified. *L. O. L. Minimum Handling Charges*, 266.

Increased c. l. and l. c. l. rates, minimum weights, and estimated weights on fresh fruits and vegetables from points east of the Mississippi River, found justified. *Fruits and Vegetables*, 291 (314, 315).

Car-lot shipments make up the greater volume of dairy tonnage, although the less-than-carload shipments are the more numerous. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (399).

CARLOAD AND LESS-THAN-CARLOAD—Continued.

So long as respondents choose to publish, with the exception specified, only any-quantity rates they can not forcibly urge as a justification for an increase in rates on traffic that does and can move in carload quantities by arguing that such increased rates are reasonable on less-than-carload shipments. *Southeastern Cotton Goods*, 530 (533).

Contention that as dairy products moving in carloads do not incur the extra terminal and station expenses incident to l. c. l. traffic they should not be charged rates which include such expenses, not passed upon. *Rates on Dairy Products*, 700 (712).

CARRIER COMPETITION. *See* Competition (Carrier).

CARS. *See also* Refrigerator Cars.

Molding sand is subject to damage from cinders or rain, and box cars are required for its transportation, which it is contended deprives respondent's use of such cars for the loading of high class commodities which yield higher revenues. *Molding Sand to Nashville, Tenn.*, 108 (110).

Cost of refrigerator cars of the latest type in use on the I. C. lines is about \$1,600, as against \$1,040 for a box car of similar size. *Fruits and Vegetables*, 291 (298).

Average life of refrigerator car is about 10 years and that of a box car about 18 years. *Id.* (299).

Compared with a companion box car of the same exterior dimensions, the refrigerator car is heavier and has less interior capacity, but costs more to construct and keep in repair. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (403).

Facts regarding equipment used for transportation of dairy products as compared with ordinary box cars. *Rates on Dairy Products*, 700 (709).

Live poultry moves in special poultry cars that can not be used for any other traffic. *Id.* (710).

CASHMAN ACT.

Referred to. *Kelley-How-Thompson Co. v. N. P. Ry. Co.* 199; *Connor Lumber & Land Co. v. G. N. Ry. Co.* 243 (245); *Northwestern Cooperage & Lumber Co. v. M., St. P. & S. S. M. Ry. Co.* 629 (631).

CHARACTER OF SERVICE. *See* Service.

CHARACTERISTICS OF COMMODITY.

Unless eggs are kept cool they deteriorate very fast. *Rates on Dairy Products*, 700 (704).

CIRCUITOUS ROUTES. *See also* Competition (Market).

Carriers whose lines are 15 per cent or more longer than the direct routes granted authority to meet the rates of the direct lines and maintain higher rates at intermediate points, provided rates to such points do not exceed rates authorized or lowest combinations. *Fruits from Florida*, 595 (604).

CIRCUMSTANCES AND CONDITIONS.

Many circumstances and conditions affecting the rates under attack in past years were materially dissimilar to those affecting the present rates, and issues presented must be determined in the light of present conditions. *Green v. A. & V. Ry. Co.* 662 (674).

CLASS AND COMMODITY RATES. *See also* Advance in Rates.

Contention that Class A rate on logging-car bodies from Kennett, Mo., to Mound, La., was unreasonable to extent it exceeded commodity rate to Tallulah, not sustained. Commodity rate to Tallulah was applicable only to logging cars and logging-car trucks. *Zelnicker Supply Co. v. St. L. & S. F. R. R. Co.* 73 (74).

CLASS AND COMMODITY RATES—Continued.

Combination class and commodity rate from Kokomo, Ind., to Ottumwa, Iowa, found to have been unreasonable to extent that commodity rate charged west of the river exceeded 8.6 cents. Reparation awarded. *Globe Stove & Range Co. v. P., C., C. & St. L. Ry. Co.* 79.

Uniformity in the state and interstate commodity rates might be reached by establishing commodity rates certain percentages of the class rates on the classes to which the commodities belong. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (127).

Fifth-class rate charged on carload of prepared roofing felt and building paper from Minneapolis, Minn., to Duluth, Minn., found to have been unreasonable to extent it exceeded commodity rate subsequently established. Reparation awarded. *Kelley-How-Thompson Co. v. N. P. Ry. Co.* 199.

Published state and interstate rates found to be unequal but a difference in rates does not necessarily constitute an undue or unreasonable preference. *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (226).

Sixth-class rates on lumber and other forest products from Cadillac and Jennings, Mich., to various destinations not shown unreasonable compared with commodity rates maintained from competing points. *Cadillac Lumber Exchange v. A. A. R. R. Co.* 636 (640).

Commodity rates on dairy products from Kansas and Nebraska points to Mississippi River crossings average 10 cents per 100 pounds less than corresponding third-class rates. *Rates on Dairy Products*, 700 (712).

Proposed cancellation of all commodity rates on dairy products and application of third-class rates in lieu thereof, throughout western classification territory, found not justified. *Id.* (718).

Cancellation of commodity rates on foundry flour and core compound in official classification rendering applicable sixth-class rates which are higher, justified. *Foundry Supply Mfrs. Asso. v. A. A. R. R. Co.* 734 (737).

CLASS RATES.

No commodity rates in effect when shipments of ashes, cinders, and foundry dirt moved, class rates applied found to be unreasonable as compared with subsequently established commodity rate. Reparation awarded. *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.* 1 (3).

Full sixth-class rates charged on printing and wrapping paper from Michigan points to C. F. A. territory while proportional sixth-class rates apply from Wisconsin points found to be prejudicial to Michigan points. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 16 (21).

Class I rate on carload of structural iron from Evansville, Ind., to Bowling Green, Ky., not found unreasonable compared with rates cited by complainant and defendant. *Mesker & Co. v. L. & N. R. R. Co.* 55.

Certain class rates from Hutchinson, Kana., to points on the E. P. & S. W. R. R. in New Mexico found unreasonable and reasonable rates prescribed. *Hutchinson Traffic Bureau v. C., R. I. & P. Ry. Co.* 689 (694).

CLASSIFICATION.**In General:**

Once established, the classification rating seems, in the carriers' view, a finality and any extraordinary changes in the volume of movement is considered a rate question and not one of classification. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (405).

A classification rating might be just as a basis for less-than-carload rates without being proper for an any-quantity rate. *Southeastern Cotton Goods*, 530 (536).

CLASSIFICATION—Continued.**In general—Continued.**

The fact that a classification has long existed and is accorded wide recognition is persuasive of its reasonableness. *Obermayer Co. v. P. Co.* 745 (746).

Bananas: Rated third class in western classification. *Dolan Fruit Co. v. C., B. & Q. R. R. Co.* 353 (354).

Barytes: Rated sixth class in the southern classification. Barytes from Tennessee, 334 (336).

Candy: Rating of third class in southern classification found to have been justified. *Dreyfus Bros. v. A. & V. Ry. Co.* 368.

Chain hoists: Second-class rating on chain hoists, i. e. l. from Philadelphia, Pa., to points in official classification territory not shown to be unreasonable or unduly prejudicial. *Industrial Traffic Asso. v. B. & O. R. R. Co.* 729 (731).

Chairstock: Rated sixth class in official classification. Lumber also is rated sixth class but generally moves at commodity rates lower than the class rates. Rates charged on chair stock found unreasonable to the extent that they exceed rates on lumber. *Southern Lumber Co. v. C., C., C. & St. L. Ry. Co.* 13 (14).

Coal, ground bituminous: Sixth-class rating applied on shipments of, from Rillton, Pa., to Chicago, Ill., not shown to have been unreasonable. *Obermayer Co. v. P. Co.* 745 (747).

Cylinders and grate bars: Proposed change in southern classification rating of new coppered or nicked cylinders used as containers for acetylene gas, from fourth to third class, not justified. Classification of Cylinders and Grate Bars, 443 (445).

Dairy products: It can not be said that third class is the normal basis on dairy products in western classification territory. Rates on Dairy Products, 700 (704, 713).

Foundry facings: Sixth-class rating applied on foundry facings between points in C. F. A. territory not shown to have been unreasonable. *Foundry Supply Mfrs'. Asso. v. A. A. R. R. Co.* 784 (737).

Silos: In southeastern territory rates on silos are made on Class A basis and higher than on building material. *Crossett Lumber Co. v. A. & L. M. Ry. Co.* 500 (502).

Staves, silo: Rating on silo staves and rafters in official classification should not exceed rating on lumber of the kind from which they are made. *Napanee Lumber Co. v. B. & O. S. W. R. R. Co.* 286 (239).

Waste: Fifth-class rate on shipment of bales consisting of manufactured cotton, woolen, and jute waste, from Worcester, Mass., to Athens and Sweetwater, Tenn., found to have been properly applied. *Mayer Co. v. S. Ry. Co.* 727.

CLASSIFICATION TERRITORY.

On eastbound traffic from Wisconsin the state of Illinois is not regarded as a part of C. F. A. territory. C. F. A. territory not defined at hearing, therefore no finding made as to rates to Illinois points. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 16 (21).

CLEANING AND DISINFECTING CARS.

Average cost of scrubbing and disinfecting refrigerator cars is \$1.20 per car per trip. Fruits and Vegetables, 291 (299).

Charges collected for cleaning and disinfecting certain cars which had been used to transport live stock from Chicago and East St. Louis, Ill., etc., to Pittsburgh, Pa., not shown to have been assessed by defendant, or that such charges were unreasonable or discriminatory. *Dunlevy Packing Co. v. P. Co.* 429.

CLEANING AND DISINFECTING CARS—Continued.

Charges assessed for cleaning and disinfecting cars used for transportation of live stock between Omaha and various points without the state of Nebraska found to have been legally applicable, and contention that live stock involved was "clean" and did not come within the Federal Regulations, not sustained. *South Omaha Live Stock Exchange v. C. G. W. R. R. Co.* 755.

CLEARFIELD DISTRICT.

Clearfield district embraces about 8,000 square miles of bituminous coal producing area of western Pennsylvania. *Johnstown, Pa., Switching*, 654 (656).

COMBINATION RATES.

Prejudice found to exist in rates on printing and wrapping paper from Michigan points to C. F. A. territory would be removed if rates on same commodities from the Fox River and Wisconsin River groups to same destinations were constructed on the lowest combinations available. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 16 (22).

Rates on fresh meats and packing-house products to points east of the Indiana-Illinois state line from Austin and Albert Lea, Minn., are made by combining intermediate rates to and from Chicago. *Hormel & Co. v. C. G. W. R. R. Co.* 23 (28).

Contention that fourth-class rates on bacon from St. Louis to Oakdale and Ward, La., were unreasonable to extent they exceed combination class and commodity rate to and from New Orleans, not sustained. *Sweet Provision Co. v. St. L., I. M. & S. Ry. Co.* 78.

Shipment found misrouted and rate charged unreasonable. Combination rate applicable over route shipment should have moved found unreasonable to extent it exceeded the joint rate subsequently established. Reparation awarded. *Torrey Cedar Co. v. C. & N. W. Ry. Co.* 135 (136).

Rates charged on milk, cream, etc., from Poultney, Vt., and Cambridge, N. Y., to Forest Hill, Mass., found unreasonable to the extent that they exceed rates based on distance scale prescribed in *New England Milk Case*, 40 I. C. C., 699. *Milk and Cream Investigation*, 375 (377).

Rates on poles and posts transported interstate from Remer and Duluth, Minn., to other Minnesota points and points in Illinois and North Dakota not shown to be unreasonable. *Duluth Log Co. v. M., St. P. & S. S. M. Ry. Co.* 415.

Contention that if combination rate based on Spokane would have been charged on cedar poles from Sand Point, Idaho, to Vale, Oreg., charges lower than joint rate would have resulted, not sustained, as the Class E rate from Spokane to Vale did not apply on poles. *Chaney Co. (Ltd.) v. O. S. L. R. R. Co.* 420 (422).

Use of class rates from Toledo, Cleveland, Springfield, Canton, Dayton, and Columbus, Ohio, and Detroit, Mich., etc., to Ohio River crossings, destined to the southeast, and use of proportional commodity rates from Chicago, Peoria, and Milwaukee, based on the Ohio River crossings to the southeast, results in undue prejudice to Toledo and other points named. *Traffic Bureau, Toledo Commerce Club v. C., H. & D. Ry. Co.* 446 (457).

Combination rate charged on shipment of iron ore from Chalybeate Springs, Ga., to Knoxville, Tenn., found unreasonable to extent it exceeded rate subsequently established over route of movement. Reparation awarded. *Knoxville Iron Co. v. A., B. & A. R. R. Co.* 747.

COMMERCE.

The true and controlling intent which determines the essential character of the commerce is not fully matured and fixed until the party who, having the right so to do, decides, under the options lawfully available to him under the transit tariffs, what is to be the final destination of the shipment. *Memphis Merchants' Exchange v. I. C. R. R. Co.* 378 (388).

COMMERCIAL CONDITIONS.

Trade conditions which surround the glucose industry such as here presented lie outside of the Commission's province and beyond its reach. *National Syrup Co. v. C. & N. W. Ry. Co.* 228 (230).

Carriers are not required by law, and could not in justice be required or permitted, to equalize natural disadvantages, such as location, cost of production, and the like. *Proportional Rates to Ohio River Crossings*, 458 (465).

Commercial considerations presented can not be regarded as controlling in determining the reasonableness of proposed rates for the service performed. *New England Lumber Rates (No. 2)*, 641 (646).

The Commission may not measure the reasonableness of rates by the commercial necessities of the shipper. *Green v. A. & V. Ry. Co.* 662 (676).

COMMODITY RATES.

Commodity rate on fuel oil from Okmulgee, Okla., to Crystal City, Mo., found unreasonable to extent it exceeded distance scale rate which would have applied in absence of commodity rate. Reparation awarded. *Pittsburgh Plate Glass Co. v. St. L. & S. F. R. Co.* 71.

A showing that the commodity rate on a particular article is a less proportion of the corresponding class rate than that on certain other articles is no more justification for an increase in the commodity rate on that particular article than a showing that the commodity rate on another article is a greater proportion of the corresponding class rate is a justification for reducing the commodity rate on that article. *Western Trunk Line Rate Increases*, 481 (489).

A contention that a commodity rate should bear a fixed, different, or any regulation whatever to the corresponding class rate overlooks the fact that the article on which the commodity rate applies has been removed from the classification and from its association with or relation to other articles, so far as the movement between certain points is concerned. *Id.* (489).

COMMON CONTROL.

Shipment of coal by chartered ocean vessels from north Atlantic ports to Port Tampa, Fla., and by rail to Tampa, not under common control, management, or arrangement, but rail movement from Port Tampa to Tampa, and handling and wharfage at Port Tampa, were part of interstate transportation and subject to the Commission's jurisdiction. *Tampa Fuel Co. v. A. C. L. R. R. Co.* 231 (233).

COMMUNITY OF INTEREST.

While the community of interest between the S. P. rail system and the Morgan line has no doubt tended to improve the joint service, it does not appear that this community of interest is dependent upon common ownership. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (173).

COMPARATIVE RATES. See also Analogous articles.

Beaver board: Rates on, from Buffalo, N. Y., to points in C. F. A. territory found unjustly discriminatory to extent that they exceed rates maintained on wood-pulp board. Reparation denied. *Wall Board Rating*, 189 (193).

COMPARATIVE RATES—Continued.

Chair stock: Rates on chair stock from Arkansas and Missouri to C. F. A. territory found to be unreasonable to the extent that they exceed rates on lumber manufactured from the same kind of wood. *Southern Lumber Co. v. C., O., C. & St. L. Ry. Co.* 13.

Coal, ground bituminous: Sixth-class rating on, from Rillton, Pa., to Chicago, Ill., not shown unreasonable compared with rate on coal briquettes and boulets, and dry core compound. *Obermayer Co. v. P. Co.* 745 (746).

Crossties: Rates on crossties from Alabama and Florida points to Pensacola, Fla., found unreasonable to extent they exceed rates maintained on lumber of the kind of wood from which the crossties are made between the same points. Reparation awarded. *Baxter & Co. v. F., A. & G. R. R. Co.* 633 (635).

Dairy products: Fresh meats, packing-house products, and live stock move on commodity rates very much lower than those on dairy products, but record insufficient for the Commission to fix a differential relationship. *Rates on Dairy Products*, 700 (707, 719).

Eggs: Comparison of rates on eggs with commodities such as books, advertising matter, glass lamp chimneys, toys and go-carts, coffins, and petroleum in tank cars are without probative force. *Rates on Dairy Products*, 700 (717).

Grain: Rates on wheat from Illinois points are somewhat higher than the rates on corn and oats to certain Mississippi Valley points, but difference between the intrastate and interstate rates to Cairo is the same on all kinds of grain and products. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378 (385).

Grapes: General circumstances and conditions surrounding the movement of fresh meats are so dissimilar from those in respect to grapes that no weight can be given to such a comparison. *Western Trunk Line Rate Increases*, 481 (495).

Hides: Rate on green salted hides and pelts from La Crosse, Wis., to Chicago, Ill., found unreasonable to extent they exceeded rate in effect on packing-house products from and to the same points. Reparation awarded. *Natenshon & Co. v. C., M. & St. P. Ry. Co.* 731 (733).

Live stock: Rates on sheep and goats in double-deck cars from points in Utah, Idaho, and Oregon to Los Angeles found unreasonable to extent that they exceed rates on cattle from same points. Relationship prescribed. *American National Live Stock Asso. v. O. S. L. R. R. Co.* 247 (250).

Machinery: Rate on machinery from St. Louis, Mo., to South Fort Smith, Ark., not found unreasonable as compared with rate on engines and boilers. *Best-Clymer Mfg. Co. v. W. Ry. Co.* 81.

Molasses: Comparison with rates on other commodities in carloads between the same points is favorable to the proposed increased rate on molasses. *Molasses from Texas and Louisiana (No. 2)*, 85 (87).

Molasses: The circumstances and competitive conditions surrounding the sugar traffic differ materially from those affecting the molasses traffic. *Scully Syrup Co. v. A. G. S. R. R. Co.* 567 (574).

Poultry: Live poultry compared with dressed poultry. *Rates on Dairy Products*, 700 (710-711).

Silos: Testimony concerning the carloading, value, and susceptibility to damage of silos as compared with lumber is not sufficiently comprehensive to warrant a finding as to what rate relationship should be established. Rates attached not shown to be unreasonable. *Crossett Lumber Co. v. A. & L. M. Ry. Co.* 500 (503).

COMPARATIVE RATES—Continued.

Staves and rafters, silos: Should take no higher rating in official classification than applicable to lumber of the same kind. *Napanee Lumber & Mfg. Co. v. B. & O. S. W. R. R. Co.* 236 (239).

Ties: Rate on pine ties from certain Texas points to El Paso, Tex., destined to Pearson, Mexico, found unreasonable to extent that they exceeded rates on pine lumber to and from same points. Reparation awarded. *Crawford v. T. & P. Ry. Co.* 753 (754).

Towels: All-rail and rail-and-water rates on cotton towels from Kannapolis and Concord, N. C., to eastern port cities and interior eastern cities held unreasonable to extent they exceeded by more than 3 cents per 100 pounds the rates on cotton piece goods. *Cannon Mfg. Co. v. S. Ry. Co.* 625 (628).

Vegetables: Rates on vegetables other than potatoes are fixed at various differentials higher than on potatoes, taking into consideration the transportation characteristics of each commodity. *Fruits and Vegetables*, 291 (319).

COMPETITION. See also Boat Lines.

In general:

The contention that the structure of rail-and-lake rates from Atlantic seaboard territory to St. Paul and Minneapolis, etc., is governed by ocean-and-rail competition and are not a fair standard to judge the rail-and-lake rates from the Scranton and Williamsport groups need not be seriously considered here. *Scranton-Williamsport Rail and Lake*, 182 (184).

While a carrier in recognition of competition may establish different rates between localities and kinds of traffic, it does not follow that the rates so established may be justified by any and all competition. *Drayage Absorptions*, 472 (475).

Compelling competition may justify carriers in varying their rates and practices at different points. *Evans Lumber Co. v. C. of G. Ry. Co.* 476 (480).

Compelling circumstances of competition over which carriers have no control have forced the establishment and maintenance of a like rate from New Orleans to St. Louis as from Mobile. *Scully Syrup Co. v. A. G. S. R. R. Co.* 567 (576).

Articles:

The northern potatoes compete with the southern product in certain markets during certain months. *Fruits and Vegetables*, 291 (313).

California sugar pine and white pine lumber compete with yellow pine lumber from the southwest. *Lumber to Eastern Colorado*, 687 (688).

Carrier:

Competition of carriers requires that the movement of traffic to the southeast through Cincinnati must be on rates and regulations equally liberal with those through Cairo, Ill., to the same points. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.* 545 (547).

Foreign:

Until 1903 export iron and steel traffic moved to Atlantic seaboard at domestic rates when manufacturers asked for lower rates to compete with producers in England, France, Germany, and Belgium, who were then in control of the foreign markets. *Eastern Export Iron and Steel*, 5 (6).

COMPETITION—Continued.

Market:

Rates on fresh and cured meats from Austin and Albert Lea, Minn., to points east of the Indiana-Illinois state line found to be prejudicial to complainants in favor of competitors at Iowa points. Adjustment prescribed. *Hormel & Co. v. C. G. W. R. R. Co.* 23 (28).

Slight differences in cost or in price of sale decide the markets to which grain will go, and very slight differences in rates will decide the routes over which it will move. *Memphis Merchants' Exchange v. I. C. R. R. Co.* 378 (383).

The Iron Mountain joins in the flat rate primarily for competitive reasons to enable the coal operators on its line to compete with other operators in southern Illinois located on lines having the direct route to Chicago. *Coal to Glencoe, Mo.*, 412 (414).

Paint manufactures in Chicago compete with paint manufactures in Detroit, Mich., for the trade of the southeast. *Traffic Bureau, Toledo Commerce Club, v. C., H. & D. Ry. Co.* 446 (452).

Where the same carrier serves two districts, which, by their location, the character of their output and distance from markets where their product must be disposed of are under substantially similar circumstances and conditions, the serving carrier can not lawfully prefer one to the other in any other manner whatsoever. *Proportional Rates to Ohio River Crossings*, 458 (465).

By reason of its geographical location the proposed South Bend group is entitled to compete at least on equal terms with the more distant market of Chicago, as the present adjustment of proportional rates from this group was voluntarily established by the carriers and is of long standing. *Id.* (466).

In no case has the Commission granted fourth section relief because of market competition as to points of origin where the petitioning carrier has not been shown to be at some substantial disadvantage by reason of having a circuitous route. *Id.* (469).

Minneapolis and Chicago manufacturers of agricultural implements compete with each other in the sale and distribution of their products. *Western Trunk Line Rate Increases*, 481 (483).

Des Moines competes with Missouri River cities in the distribution of roofing and building material and other commodities. *Id.* (490).

Comparisons do not indicate that Milwaukee, Chicago, and Chicago rate points are at any substantial disadvantage in competition with St. Louis unless it be at points which, geographically, appear to be more naturally tributary to St. Louis than to complaining points. *Scully Syrup Co. v. A. G. S. R. R. Co.* 567 (572).

Competition of Florida fruit growers with Alabama and Louisiana growers is not shown to be very extensive except that which is met in the market at New Orleans. *Fruits from Florida*, 595 (602).

In order to meet competition of other coal mines throughout the Clearfield district complainants were forced to sell their coal at the same market prices and to absorb the local charges of the Johnstown & Stony Creek out of their profits. *Johnstown, Pa., Switching*. 654 (661).

COMPETITION—Continued.

Rail and Boat Lines:

The S. P. Co.'s rail system and its rail connections form all-rail trans-continental routes via El Paso and Ogden gateways, and these all-rail routes engage in the "most active and vigorous competition" with the Sunset-Gulf route and by its participation and carrying of traffic over these all-rail routes, actively competes with its Atlantic Steamship lines through both New Orleans and Galveston. *S. P. Co. Ownership of Atlantic S. S. Lines*, 156 (171).

While circumstances tend to show that the petitioner's interest in these steamship lines excludes, prevents, or reduces competition on these water routes, yet a severance of the joint ownership might have a still greater tendency to reduce competition. *Id.* (172).

Because of active water competition which the Morgan line from New York to Galveston has had to meet for many years the port to port rates between New York and Galveston are to a large extent commodity rates relatively lower than the port to port rates applying between New York and New Orleans. *Id.* (175-176).

Petitioner contending that its rail line does not compete with its boat line within meaning of the Panama Canal Act, and that the Commission is without jurisdiction in the premises, *Held*, Nothing of record, upon rehearing, would warrant the changing of finding made in *Lake Line Applications Under the Panama Canal Act*, 33 I. C. C., 699. *Application of G. T. Ry. Co. of Canada*, 286 (288).

Railroad:

The various railroads serving Cincinnati, Louisville, Evansville, and Cairo compete with each other for the movement of through traffic to the southeast originating in the north and west. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378 (380).

Competition between rival railway routes for the same traffic may justify lower rates and charges upon such traffic than upon other traffic otherwise similar. *Drayage Absorptions*, 472 (474).

Water:

Proportional rate on petroleum was originally established from Wood River, Ill., to meet the water competition and was subsequently established from various producing points. *Petroleum to Kentucky Stations*, 35 (42).

Rockport group rates were reduced to the Evansville basis to enable points in that group to compete with river crossings on logs from the Ohio River. At present there is practically no competition with river crossings. Increases in rates to C. F. A. territory justified. *Lumber from Indiana Stations*, 117 (119).

Water competition does not fix the measure of the rail rates to Memphis. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 366 (368).

If carriers are permitted to apply higher rates for the same service on traffic routed over connecting water lines than on traffic routed all rail, they will be in a position to destroy water competition and to deprive communities and shippers of the advantages of location upon the navigable waters. *Inland Nav. Co. v. W. Ry. Co.* 588 (592).

Carriers authorized to charge lower rates to Savannah than to intermediate points on citrus fruits owing to existing water competition. *Fruits from Florida*, 595 (604).

COMPETITION—Continued.**Water—Continued.**

On lumber and forest products from Cadillac and Jennings, Mich., there is active competition by water, and should rail rates be increased shippers would immediately avail themselves of the water routes, which would result in an increase in the facilities for water transportation. *Cadillac Lumber Exchange v. A. A. R. R. Co.* 636 (637).

COMPETITIVE CONDITIONS.

Maintenance of rates from Evansville lower than the rates from Rockport group is justified by competitive conditions at Evansville. Lumber from Indiana Stations, 117 (120).

Manufacturers located in the South Bend group are compelled to meet competitive conditions in both originating and destination territories. *Proportional Rates to Ohio River Crossings*, 458 (464).

The right of a carrier so to adjust its rates as to prevent one community from competing with another, or keep the products of one community out of a territory, the wants of which may be fully supplied by another community, has never been recognized by the Commission. The duty imposed by law is to give equal treatment to all shippers, and this includes the right to reach competitive markets on relatively equal transportation terms. *Id.* (465).

If carriers establish and maintain rates lower than they could be required to publish, to meet competitive or other conditions at a particular point, they are not thereby relieved from the obligation imposed by law to remove unjust discrimination which may arise from meeting competition or other conditions at one point and refusing to meet the same conditions at another point entitled to the same consideration. *Id.* (465).

CONCURRENCE SHEETS.

Are not posted in the same manner as are tariffs, and no opportunity is afforded the general public to ascertain whether or not the terms of the concurrence limit the application of the tariff in so far as the participating road is concerned. *Healy & Towle v. C. & N. W. Ry. Co.* 83 (84).

- CONDITIONAL RATE"

Lower rate provided in tariff on blackstrap molasses, dependent upon a declared value of 8 cents or less per gallon, referred to as the "conditional rate." *Scully Syrup Co. v. A. G. S. R. R. Co.* 567 (568).

CONGESTION.

Establishment of so-called "permit" system to relieve congestion at complainant's warehouse in New York, in lieu of embargoes, caused by accumulation of hay, found to be unlawful. *New York Hay Exchange Asso. v. N. Y. C. R. R. Co.* 281 (284).

CONSOLIDATED SHIPMENTS.

A rule permitting the concentration at the point of shipment of numerous small shipments belonging to different shippers into one large shipment for the transportation to one consignee by a steamship line may or may not be proper. There appears no justification for applying a special rate on small shipments which are aggregated at destination after transportation service has been completed. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (178).

CONSTRUCTIVE MILEAGE.

While the actual distance from Wilmington to Carney's Point, N. J., is approximately 5 miles, the table of distances of the P. & R. Ry. Co. gives to this haul a constructive or arbitrary length of 80 miles. *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.* 1 (2).

CONSTRUCTIVE MILEAGE—Continued.

Commission unable to subscribe to the doctrine that carriers may observe and disregard constructive mileage at their pleasure. If such mileage is reflected in their rates applicable over a route necessitating the use of a bridge it may not then be disregarded in ascertaining the mileage of that route. *Paducah Board of Trade v. I. C. R. R. Co.* 537 (540).

CONTINUOUS CARRIAGE.

The billing of shipments, care of boat line, to a consignee at Galveston originating in interior Atlantic territory upon which a carrier issues a through bill of lading, are continuous shipments carried under a common arrangement between the carriers, and the failure of the boat line to file its rates applicable upon such shipments appears indefensible. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (179).

CONTRACTS.

Refrigeration on the lines of the U. P. system is performed under contract by the Pacific Fruit Express Co., a corporation owned by the U. P. and the S. P. Fruit Refrigeration, 102 (104).

Contract between Buffalo & Susquehanna R. R. Corp. and the Pennsylvania R. R. Co. for period of 50 years for the handling of coal and coke via Driftwood, Pa., referred to. *Buffalo Union Furnace Co. v. B. & S. R. R. Corp.* 218 (221).

Forms of shipping contracts were not prescribed by the Commission as were the classification, uniform receipts, etc., and their approval by the Commission is not necessary. *Released Rates*, 510 (512).

COST OF OPERATION.

Cost of operation of the Great Lakes Transit Corporation for years 1915 and 1916 shown. *Bay State Milling Co. v. G. L. T. Corp.* 338 (345).

COST OF SERVICE.

Fruit and vegetable traffic requires more special services, equipment, and facilities than ordinary traffic, thereby increasing the difficulties and costs of transportation. *Fruits and Vegetables*, 291 (299).

CUMMINS AMENDMENT.

It is clearly the purpose of the, as amended, to invalidate all limitations of liability for loss, damage, or injury to ordinary live stock caused by the initial carrier or by another carrier to which shipment may be delivered or which may participate in transporting it, notwithstanding any representation or agreement or release as to value. *Released Rates*, 510 (513).

DAMAGES.

Original hearing adjourned because of agreement of parties as rates under attack had been adjusted. Evidence of supplemental hearing insufficient to base an award of reparation. *Ryegate Paper Co. v. B. & M. R. R.* 50.

There is no proof of damage to complainant on account of former discrimination upon which to base an award of reparation. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 65 (66).

Complainant requests reparation on shipments of cotton which might be affected in the future by the L. & N. transit rule at Montgomery, Ala., if extension of time requested is not granted, but this is a matter which can not be considered at this time. *Montgomery Cotton Exchange v. L. & N. R. R. Co.* 197 (198).

Reparation is due the person who has been required to pay the excessive charge as the price of transportation. *Napanee Lumber & Mfg. Co. v. B. & O. S. W. R. R. Co.* 236 (240).

DAMAGES—Continued.

Complainant not shown to have been damaged by the payment of a rate found to have been discriminatory in former proceeding. *Omaha Alfalfa Milling Co. v. U. P. R. R. Co.* 264 (265).

Record affords no ground for an award or reparation on the basis of retroactive divisional allowances. *Cybur Lumber Co. v. N. O. & N. E. R. R. Co.* 268 (275).

Amount shippers were damaged by loss of sales for hay during period when "permit" system, which is herein disapproved, was in effect, because of inability to obtain permits, can not be determined upon the evidence. *New York Hay Exchange Asso. v. N. Y. C. R. R. Co.* 281 (285).

In the absence of proof of damage to the shipper, an incidental contravention of the long-and-short-haul rule of the fourth section over an alternative route does not of itself afford a sufficient basis for an award of reparation. *La Crosse Shippers' Asso. v. C., I. & L. Ry. Co.* 520 (524).

Complainant found to have been damaged by excessive charges during certain period covered by complaint. Reparation awarded. As present rates not shown to be unreasonable no order for the future is required. *Consumers Co. v. M., St. P. & S. S. M. Ry. Co.* 561 (566).

Claim for reparation on shipments of vehicles from Indianapolis, Ind., to Ackerman, Miss., denied. Rates not shown to be unreasonable, and the only party properly complainant was not present at the hearing. *Hearon v. I. C. R. R. Co.* 577 (578).

Charges on shipment of coal from Du Quoin, Ill., to Cape Girardeau, Mo., reconsigned to Gideon, Mo., which involved a back haul, found unreasonable. Reparation awarded. *Graves Coal & Coke Co. v. St. L. & S. F. R. R. Co.* 579 (580).

Reparation awarded for excessive freight charges applied on lumber from Falco, Ala., over Galliver, Fla., the junction point, paid by complainant or by accepting a reduction in price equivalent to freight arbitrary. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.* 581 (587).

Reparation awarded for excessive charges caused by P. R. R. Co.'s refusal to extend the Clearfield district rates on outbound coal from mines on the Johnstown & Stony Creek R. R. Co., Johnstown, Pa. Switching, 654 (661).

DANGEROUS ARTICLES.

Rules adopted for the handling of volatile oils, placarding and placing of cars, and requirements as to shipping in iron or steel containers or tank cars have done much to reduce hazard of handling them. *Petroleum to Kentucky Stations*, 85 (40).

DELEGATION OF AUTHORITY.

Allegation that the delegation by Congress to this Commission, of authority to establish through routes and joint rates between carriers engaged in interstate commerce is violation of fifth amendment to the federal constitution is without merit. *Paducah Board of Trade v. I. C. R. R. Co.* 587 (540).

DEMONSTRATIONS. See Educational Trains.**DEMURRAGE.**

Demurrage charges assessed on shipment of hay at Tampa, Fla., shipped from Dryden, Mich., not found unlawful. It is not shown that the real cause of delay in accepting the shipment was due to the omission in bill of lading made by the carrier. *Miller-Jackson Grain Co. v. P., O. & N. R. R. Co.* 147.

DEMURRAGE—Continued.

Complainants found to have been damaged to the extent of unreasonable rate and demurrage charges because of carrier's failure to receive and transport shipment over route originally specified which was available. *Wistar, Underhill & Nixon v. C. & O. Ry. Co.* 254 (256).

Demurrage rules in effect at Boston and East Boston, Mass., applicable on export freight not shown unreasonable. *Moore Stave Co. v. B. & A. R. R. Co.* 679.

DEPRESSED RATE.

It does not appear that the rate on coal from western Kentucky mines to Louisville is depressed to less than a reasonable basis, nor to such a level that it can not be fairly used for comparative purposes. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 366 (871).

Rates submitted for comparison are depressed rates and may not be made the "exact measure" of the rate under attack. *Green v. A. & V. Ry. Co.* 662 (669).

DESCRIPTION OF COMMODITY.

Proposed redescription of wrapping paper in carloads and increased commodity rates resulting therefrom justified. *Western Trunk Line Rate Increases*, 481 (500).

DESIRABILITY OF TRAFFIC.

According to evidence, lumber is considered by ocean carriers to be relatively undesirable traffic, and it is frequently left in the hands of the rail carriers even in violation of the arrangement for ocean carriage upon which it was forwarded to the port. *Evans Lumber Co. v. C. of G. Ry. Co.* 476 (478).

DETERIORATION. See also Characteristics of Commodity.

Susceptibility to deterioration in transit the three meat foods rank—fish, fowl, and flesh; while that of dairy products rank—dressed poultry, eggs, butter, and cheese. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (403, 404).

DEVICE.

To defeat embargoes certain shippers billed their shipments to the ports as for domestic use and in less than carloads and after having gotten them there delivered them to the steamships through their own agencies. *Eastern Export Iron & Steel Case*, 5 (7).

A practice has grown up of applying to shipments by boat lines which originate in interior Atlantic territory to interior destinations in Texas the combination rates based on Galveston and thus defeating the lawful through rates. Such shipments held to be through shipments and subject to the act. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (180).

Practice of consigning shipments from Arkansas and Louisiana to Dallas, Tex., and reshipping to Oak Cliff, Tex., at an intrastate rate was an illegal device to defeat the joint through rates legally applicable. *Dallas Cooperage & Woodenware Co. v. G., C. & S. F. Ry. Co.* 241 (242).

Any device, by transfer from one carrier to another, or which in any other manner has the effect of defeating through interstate rates, is unlawful. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378 (391).

DIFFERENTIALS. See also Zone Rates.

Tables showing differentials in export and domestic rates over Pittsburgh from Chicago and Cincinnati to seaboard. *Eastern Export Iron & Steel Case*, 5 (11).

DIFFERENTIALS—Continued.

Rates on other vegetables are fixed at various differentials higher than on potatoes, taking into consideration the transportation characteristics of each commodity. *Fruits and Vegetables*, 291 (319).

Adjustments which arbitrarily fix the rates on one commodity a uniform differential over those on another, without regard to distance, are unscientific and must result in some degree of injustice. *Id.* (332).

Rates on bananas from New Orleans and other Gulf ports to Grand Island and Hastings, Nebr., 19 cents higher than rates to Lincoln, Nebr., found unreasonable. *Dolan Fruit Co. v. C., B. & Q. R. R. Co.* 353 (355, 358).

Rates on Illinois grain to Memphis are uniformly 4 cents higher than to Cairo and Evansville, and carriers from Memphis, by transit arrangements, equalize the rates through the latter point to southeastern, Carolina, and Mississippi Valley territories with those through the Ohio River crossings. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378 (381).

Differentials shown under the all-rail rates applied by respondents in making rail-and-lake rates to Detroit from a part of territory east of a line extending from Buffalo, N. Y., to Pittsburgh, Pa., etc. *Ohio Rail and Lake*, 525 (528).

The requirement of a differential between screenings and other sizes of bituminous coal not found to be justified. *La Crosse Shippers' Asso. v. C., M. & St. P. Ry. Co.* 605 (614).

All-rail and rail-and-water rates on cotton towels from Kannapolis and Concord, N. C., to eastern port cities and interior eastern cities held unreasonable to extent they exceed by more than 8 cents per 100 pounds the rates on cotton piece goods. *Cannon Mfg. Co. v. S. Ry. Co.* 625 (628).

Commission not prepared on the present record to determine just what differential relation should obtain in respect to the rates on dairy products and fresh meats. *Rates on Dairy Products*, 700 (719).

DISCRIMINATION. See also Preferences and Prejudices.

Lower rates on mixed carloads of lumber and doors than on straight carloads of lumber was unjustly discriminatory, but this discrimination has been removed. *Sand Point Lumber & Pole Co. v. G. N. Ry. Co.* 59 (61).

Service rendered in connection with shipments of glass sand at Silica, Ohio, is not shown to be in any wise discriminatory. *National Silica Co. v. T., A. & W. Ry. Co.* 63.

Charging first-class rate of 21 cents per 100 pounds on potatoes to Bushwick station, Brooklyn, N. Y., from Parksley, Melfa, and other points in Virginia, while maintaining rate of 31.5 cents per barrel, estimated weight of 175 pounds, to other points in Brooklyn, not shown discriminatory. Per barrel rate subsequently established to Bushwick station. Reparation denied. *Rosenblum v. N. Y., P. & N. R. R. Co.* 67.

Evidence insufficient to determine rates on fuel oil from Okmulgee, Okla., to Crystal City, Mo., to be discriminatory as compared with St. Louis. *Pittsburgh Plate Glass Co. v. St. L. & S. F. R. R. Co.* 71 (72).

Allegation of discrimination in denying milling in transit on rice and allowing it on wheat, corn, oats, and the products thereof, not sustained upon evidence. *Southern Rice Growers Asso. v. T. & N. O. R. R. Co.* 90 (91, 92).

DISCRIMINATION—Continued.

In supplemental report carriers required to remove undue discrimination found to exist against Memphis due to the present relationship of class rates between Memphis and certain points in Arkansas. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (125).

Complainant not shown to have been damaged by the payment of a rate found to have been discriminatory in former proceeding. *Omaha Alfalfa Milling Co. v. U. P. R. R. Co.* 264 (265).

Carriers expected to make such adjustment as between the Chicago shippers and the Peoria and Pekin shippers of Glucose as to remove any residual undue discrimination. *Grain and Grain Products from Argo, Ill.*, 359 (362).

Discrimination disclosed in rates on grain and products to and through Cairo, Ill., against grain dealers at Evansville, Ind., Henderson, Ky., and Memphis, Tenn., on shipments originating in Illinois to southeastern, Carolina, and Mississippi Valley territories, arises from failure of defendants to collect their published rates on interstate shipments through Cairo to destinations named. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378 (390).

The Commission is charged with the responsibility of seeing that discrimination in the rates or service of common carriers in recognition of competition is sufficiently justified and is not undue either in kind or extent; and it is the view of the court that the public interest, including that of the carrier must be made the test. *Drayage Absorption*, 472 (475).

Contended that it is discriminatory to maintain the same rates on fuel oil as on high-grade oils. Cases cited wherein the different characteristics between these oils have been fully considered. Increased rates on fuel oil, not found justified. *Fairmont Creamery Co. v. A., T. & S. F. Ry. Co.* 515 (517-518).

Unjust discrimination can not be predicated merely on the refusal of the Soo line to meet competition of other carriers by the absorption of switching charges. *Consumers Co. v. M., St. P. & S. S. M. Ry. Co.* 561 (566).

Any discrimination that may have existed in rates on ground bituminous coal from Rillton, Pa., to Chicago, Ill., by reason of the lower commodity rates maintained on dry core compound will be removed following decision in *Foundry Supply Mfrs. Asso. v. A. A. R. R. Co.*, 43 I. C. C., 734. *Obermayer Co. v. P. Co.* 745 (747).

DISTANCES. See also Constructive Mileage.

Most adjustment of rates on a group basis result in some inequalities when distance alone is considered, but such inequalities are not of necessity unreasonable or unjust. *La Crosse Shipper's Asso. v. C., I. & L. Ry. Co.* 520 (523).

DISTANCE RATES. See also Commodity Rates.

Reasonable distance scale of maximum class rates between Memphis, Tenn., and certain points in Arkansas prescribed. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (123).

DISTURBANCE OF ADJUSTMENT.

The claim of error or sentiment as an excuse for increasing a long existing rate adjustment is not persuasive. *Proportional Rates to Ohio River Crossings*, 458 (464).

DISTURBANCE OF ADJUSTMENT—Continued.

Rates on glass from Sergeant, Pa., to Toronto, Ont., and Montreal, Que., not shown to be unreasonable as compared with rates from Port Allegany which is located in adjoining group. To place Sergeant on an equality with Port Allegany would disturb existing group adjustment. *Sergeant Glass Co. v. P. R. R. Co.* 622 (624).

DIVISIONS.

If the respondents desire to make this case a question of divisions and have it passed upon by this Commission, they should present it in such a way that the Commission can exercise authority conferred upon it by the act. *Boston-New York Proportional Rates* (No. 2), 203 (210).

The shipping public have no interest in the question of divisions. *Id.* (210).

The divisions allowed to the Cybur, Gulf & N. W. R. R. out of joint rates ordered established, should in no event exceed the maximum amounts fixed in second supplemental report and order in the *Tap Line Case*, 31 I. C. C., 490. *Cybur Lumber Co. v. N. O. & N. E. R. R. Co.* 268 (273).

Table showing divisions and ton-mile revenue of joint through rates on wheat to New York and other eastern destinations via Lake Michigan and Lake Superior ports. *Bay State Milling Co. v. G. L. T. Corp.* 338 (344).

DOMESTIC RATES.

The domestic rates on blackstrap molasses from Gulf ports being differentially 3 cents over the import rates are in effect, fixed by the import rate. *Scully Syrup Co. v. A. G. S. R. R. Co.* 567 (576).

DOUBLE-DECK CARS.

Tariff should provide that if a double-deck car is ordered and in lieu thereof two single-deck cars are furnished they may be used at the rate and minimum weight applicable to the double-deck car, provided a period of two days exclusive of the day of notice, is allowed in which to furnish the car ordered. *Swift & Co. v. C., B. & Q. R. R. Co.* 56 (58).

DRAWING-ROOM.

Not unreasonable to require a passenger desiring the exclusive use of a Pullman drawing-room from St. Paul, Minn., to Chicago, Ill., to purchase two railroad tickets. *R. R. Comm. of Nevada v. S. P. Co.* 36 I. C. C., 250, cited and followed. *Carter v. M., St. P. & S. S. M. Ry. Co.* 51.

DRAYAGE.

Rule providing for the absorption of drayage charges on shipments to local as well as competitive points, stored in transit at certain warehouses, found unjustifiable and disapproved. *Drayage Absorption*, 472 (475).

EARNINGS. See also Averages; Car-Mile Earnings, Ton-Mile Revenue.

In general:

The location of points in different territories where different conditions prevail occasionally warrants departure from the rule that per ton-mile and per car-mile earnings should decrease with distance. *Hormel & Co. v. C. G. W. R. R. Co.* 23 (25).

Commission is interested in the maximum rather than the minimum earnings of industrial roads and sees that their earnings as a whole and on particular descriptions of traffic do not exceed a fair return for the services performed. *Johnstown, Pa., Switching*, 654 (660).

Bananas: Tables showing the rates on bananas in carloads from New Orleans to destination in Nebr., Mo., Kans., Colo., and Iowa, the earnings per ton-mile and per car-mile, etc. *Dolan Fruit Co. v. C., B. & Q. R. R. Co.* 353 (355).

EARNINGS—Continued.

Coal: Average earnings on ground bituminous coal from Rillton, Pa., to Chicago, Ill., shown. *Obermayer Co. v. P. Co.* 745 (746).

Dairy Products: Return per car-mile and per ton-mile on dairy products, Chicago to New York, compared with the returns on other foods. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (408).

Lumber: Ton-mile and car-mile earnings shown on average loading of lumber in C. F. A. territory. *Lumber from Indiana Stations*, 117 (120).

Lumber: Average car-mile and ton-mile earnings on lumber from Odanah, Wis., to certain destinations, shown. *Stearns Lumber Co. v. C. & N. W. Ry. Co.* 215 (217).

Lumber: The Bangor & Aroostook relies principally upon its financial condition in justification of rates proposed and their earnings can not be regarded as excessive or constituting an adequate return upon the carrier's investment. *New England Lumber Rates (No. 2)*, 641 (646).

Naphtha: Car-mile and ton-mile earnings on certain carloads of naphtha from North Ft. Worth, Tex., to Klefer, Okla., under rate found unreasonable and rate subsequently established, shown. *Gulf Refining Co. v. St. L., S. F. & T. Ry. Co.* 757 (758).

Oil: Car-mile and ton-mile earnings on fuel oil from Okmulgee, Okla., to Crystal City, Mo., under rate charged and rate found reasonable, shown. *Pittsburgh Plate Glass Co. v. St. L. & S. F. R. R. Co.* 71 (72).

Oil: Car-mile and ton-mile earnings on fuel oil from Kansas and Oklahoma refineries to Omaha, Nebr., shown. *Fairmont Creamery Co. v. A., T. & S. F. Ry. Co.* 515 (519).

Steel: Car-mile and ton-mile earnings on steel from Pittsburgh, Pa., to Bridgeburg, Ontario, shown. *Chicago Bridge and Iron Works v. P. & L. E. R. R. Co.* 68 (69).

Vegetables: Average ton-mile and car-mile earnings on vegetables under present rates from New Orleans to destinations in eastern trunk line territory compared with earnings under the current rates from points in Florida, Georgia, South Carolina, and Texas. *Fruits and Vegetables*, 291 (304).

EDUCATIONAL TRAINS.

Improved methods of shipping dairy products in territory west of the Missouri River is due to the railways cooperating with shippers in conducting campaigns of education and by special trains manned by government experts. *Rates on Dairy Products*, 700 (705).

ELECTRIC LINE.

Proposed proportional rates on gasoline, petroleum, and products from Delaware, Okla., to Coffeyville, Kans., for purpose of equalizing the through rates in effect via the electric traction line and its connections with those in effect via the Missouri Pacific found not justified. *Gasoline from Coffeyville, Kans.*, 98 (100, 101).

Increased rates on certain traffic between New York, N. Y., and points in Rhode Island on line of the Rhode Island Co., an electric line, found justified. *Hartford & New York Transp. Co. Joint Rates*, 417.

ELKINS ACT.

Reduction in rates because of foreign competition is stated to have been intended to take the place of rebates or concessions that had probably been granted before the Elkins Act became effective. *Eastern Export Iron and Steel Case*, 5 (6).

EMBARGOES. *See also*, "Permit" System.

Congestion at the seaboard during past year has at times necessitated the embargoing of iron and steel for export. *Eastern Export Iron and Steel Case*, 5 (7).

An embargo on fuller's earth by the M. & M. Transp. Co. not shown to have been unduly prejudicial. *Prudential Oil Corp. v. M. & M. Transp. Co.* 696 (699).

A showing that there was no accumulation of a particular commodity which was embargoed by a carrier does not of itself justify a finding of undue prejudice and disadvantage to shippers of said commodity in a case where there was an excessive accumulation of other freight. *Id.* (699).

Whether or not an embargo resulted in undue prejudice and disadvantage is determinable only upon consideration of all the facts, circumstances, and conditions in a particular case. *Id.* (699).

EMPTY MOVEMENT.

Empty haul of cars in the fresh-meat service is said to be 80 per cent of the loaded-car movement. *Fruits and Vegetables*, 291 (331).

Of railroad-owned refrigerator cars, is not much greater than that of box cars, but very much less than that of privately owned refrigerator cars. *Rates on Dairy Products*, 700 (710).

Empty movement of special poultry cars is 100 per cent of the loaded movement, while empty movement of refrigerator cars, in which dressed poultry and other dairy products move, does not average more than 35 per cent of the loaded movement. *Id.* (710-711).

Percentage of empty to loaded movement of the cars in which dressed meats are transported is very much greater than that of cars in which dairy products are transported. *Id.* (711).

EQUALIZING CONDITIONS.

Carriers are not required by law and could not in justice be required or permitted to equalize natural disadvantages such as location, cost of production, and the like. *Proportional Rates to Ohio River Crossings*, 458 (465).

EQUALIZING TRANSPORTATION COSTS.

Complainant's right to reparation on shipments sold on f. o. b. basis questioned. To go into the matter of allowances between parties would lead the Commission away from the direct results of the carrier in the exaction of an unreasonable rate into the domain of indirect and remote consequences, and perhaps into questions of equity between the vendor and the vendee. *Napanee Lumber & Mfg. Co. v. B. & O. S. W. R. R. Co.* 236 (239).

EQUALIZING RATES.

The latest application of the uniformly accepted policy of rate equalizations between the west and the east on shipments to the southeast is the proportional rate basis and the extension of southern classification. *Traffic Bureau, Toledo Commerce Club v. C., H. & D. Ry. Co.* 446 (455).

EQUIPMENT. *See* Cars.**ERIE CANAL.**

The Erie Canal is generally understood to have played a part in depressing rates from Buffalo to the seaboard. *Eastern Export Iron and Steel Case*, 5 (10).

ERROR. *See also* Notice of Arrival.

Increased rates resulting from an error made in restricting the destination to which milled product of wheat could be shipped corrected as soon as discovered. Reparation awarded. *Valley City Milling Co. v. G. R. & I. Ry. Co.* 75 (76).

The claim of error or sentiment as an excuse for increasing a long-existing rate adjustment is not persuasive. *Proportional Rates to Ohio River Crossings*, 458 (464).

Advance authorized by *Five Per Cent Case*, not published on account of clerical error; proposed increases not justified. *Sand from Indiana Stations*, 619 (621).

ESTIMATED WEIGHT. *See* Weight (Estimated).**EXPEDITED SERVICE.**

Fresh meats and packing-house products are high-class freight requiring expedited service. Rates which produce car-mile earnings under 13 cents can not be said to be unreasonable. *Hormel & Co. v. C. G. W. R. R. Co.* 23 (26).

EXPORT BILLS OF LADING. *See also* Bills of Lading.

A shipper to whom an export bill of lading is given may negotiate it immediately at a bank and thereby realize all or a large part of the value of his shipment in cash. *Evans Lumber Co. v. C. of G. Ry. Co.* 476 (477).

EXPORT RATES. *See also* Advance in Rates (Rice).

Increases in export rates on iron and steel articles from C. F. A. and trunk-line territories to Atlantic ports and from points in C. F. A. territory to Gulf ports not justified as a whole, but carriers authorized to apply present domestic rates on export traffic from Pittsburgh to the Atlantic ports, provided Chicago, Cincinnati, etc., are given rates to the seaboard properly adjusted thereto. *Eastern Export Iron and Steel Case*, 5.

Proposed increased commodity rates on iron and steel from Chicago, Ill., Pittsburgh, Pa., etc., to Pacific coast terminals for export justified. *Western Export Iron and Steel Case*, 129.

Maintenance of different export rates to the same port dependent upon the foreign destination of the traffic is not unlawful under circumstances here shown. *Id.* (131).

Increased through charges on grain products and by-products, both domestic and export, from points in the Chicago Switching district via the Lehigh Valley Transp. Co. to points east of Buffalo, N. Y., not justified. *Grain Products Rates via Great Lakes*, 550 (555).

EXPORT TRAFFIC.

Demurrage rules applicable to export shipments at Boston and East Boston, Mass., not found unreasonable. *Moore Stave Co. v. B. & A. R. R. Co.* 679.

Dressed poultry may be shipped in mixed carloads with fresh meat or fresh meat and packing-house products from Fort Worth to the Gulf ports for export to Cuba. *Rates on Dairy Products*, 700 (715).

EXPRESS RATES.

Cancellation of joint commodity express rates on fruits and vegetables, in carloads, from certain Washington points to points in other states, through Spokane, Wash., not justified. *Davies Spur, Wash., Express Rates*, 143 (146).

Rates authorized for the transportation by express of property, except ordinary live stock, dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value. *Released Rates*, 510.

EXPRESS SERVICE.

The element of time is the controlling factor that makes express service valuable, and it is of especial importance in connection with transportation of such perishable commodities as fresh fruits and vegetables. Davies Spur, Wash., Express Rates, 143 (146).

FACTOR.

Combination rate on threshing machine from Grand Island, Nebr., to Webber, Kans., not found unreasonable compared with an intrastate factor not on file with Commission. *Savage v. A., T. & S. F. Ry. Co.* 70.

Combination class and commodity rate from Kokomo, Ind., to Ottumwa, Iowa, found unreasonable to extent that the commodity rate west of the river exceeded 8.6 cents. Reparation awarded. *Globe Stove & Range Co. v. P., C., C. & St. L. Ry. Co.* 79.

Factors of through rates on traffic from Cleveland, Toledo, Springfield, Canton, Dayton, and Columbus, Ohio, and Detroit, Mich., etc., to Ohio River crossings, destined to the southeast, and use of proportional commodity rates from Chicago, Peoria, and Milwaukee, based on the Ohio River crossings, destined to the southeast, results in undue prejudice to Toledo and other points mentioned. Traffic Bureau, Toledo Commerce Club v. C., H. & D. R. Ry. Co. 446 (457).

The 20-cent factor seems to have been adopted because that is the proportion which the respondents with lines from the western termini of trunk lines to Chicago receive for that haul on shipments of cotton piece goods from New England points. Southeastern Cotton Goods, 530 (536).

Objection to sufficiency of evidence because limited to factors applicable beyond Chicago and west bank Lake Michigan gateways, not sustained as case brings in issue the charges applicable to through shipments from mines in West Virginia and all carriers have been made defendants. La Crosse Shippers' Asso. v. C., M. & St. P. Ry. Co. 605 (607).

In determining the reasonableness of a portion of a through rate facts in connection with the through rate of which it is a part must be considered. *Green v. A. & V. Ry. Co.* 662 (667).

FINDING OF COMMISSION. See also Order of Commission.

Finding that rates on chair stock are unreasonable to the extent that they exceed rates on lumber of the same kind of wood, will be modified if a different conclusion is reached in *In the Matter of Rates on and Classification of Lumber and Lumber Products*, Docket 8131, not yet submitted. Southern Lumber Co. v. C., C., C. & St. L. Ry. Co. 18 (15).

Finding made under section 1 renders unnecessary detailed consideration of the evidence with relation to allegations of violations of sections 3 and 4. Grain and Grain Products from Argo, Ill., 359 (360).

FIXING RATES.

A group of carriers can not establish a peculiar system of rate making and arbitrarily limit its territorial application. Traffic Bureau, Toledo Commerce Club v. C., H. & D. Ry. Co. 446 (456).

FOREIGN COMPETITION. See Competition (Foreign).**FOUR-MONTHS' RULE.**

Not shown to be unreasonable to apply to shipments by express the four-month provision limiting the carriers liability against claims for loss and damage. Released Rates, 510 (512).

FRACTIONS.

A difference of one-half cent in rates will turn the course of traffic. Grain from Missouri Points, 737 (739).

FREE SERVICE.

Failure to provide for free return of heaters and linings used in connection with shipments of potatoes moving from points in trunk line and C. F. A. territories to points in Minnesota, not shown unreasonable. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.* 545 (549).

FREE TIME.

As a result of the advantage of free storage time allowed by the Southern Pacific at the Blenville warehouse, shippers favor that warehouse. *Drayage Absorption*, 472 (473).

FREIGHT ALLOWANCES. See *Equalizing Transportation Costs*.

GRADING RATES.

If it is found that certain long hauls within Arkansas require an extension of interstate class scale beyond 300 miles in order to determine nondiscriminatory state rates, carriers will be expected to grade up the interstate distance rates in conformity with rates prescribed for distances between 300 and 400 miles. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (126).

GREAT LAKES TRANSIT CORPORATION.

Was organized subsequent to divorcement of lake lines from their rail owners. Date of incorporation and capital shown. *Bay State Milling Co. v. G. L. T. Corp.* 338 (342).

GREEN LINE TERRITORY.

Described. *Proportional Rates to Ohio River Crossings*, 458 (461).

GROUP RATES.

Proposed increased rail-and-lake and rail-lake-and-rail rates to St. Paul and Minneapolis, Minn., etc., which would have effect of placing the rates from the Scranton group on the Philadelphia, Pa., basis and those from the Williamsport and Northumberland groups on the Baltimore, Md., basis, found not justified. *Scranton-Williamsport Rail and Lake*, 182 (185).

Reduction in rates on lumber from the Hurley, Wis., group, to Chicago, without an equal reduction in joint rates from Odanah, which point is included in the Hurley, Wis., group, to eastern destinations, not found to have been unreasonable. *Stearns Lumber Co. v. C. & N. W. Ry. Co.* 215 (217).

Adjustment of rates on coal and coke from points in the Reynoldsville district, Pa., served by the B. & S. R. R. Corp. to Buffalo, Lackawanna, and Harriet, N. Y., etc., in so-called Buffalo-Black Rock switching district, found unduly prejudicial to extent that the group rate on coal from origin to destination exceeds 80 per cent of rate on coke from Tyler and Sykes, Pa., to Lackawanna. *Buffalo Union Furnace Co. v. B. & S. R. R. Corp.* 218 (222).

Carriers have voluntarily grouped Plasterco with Acme on both northbound and southbound traffic generally, and no sufficient reason appears for making an exception with respect to the rate on cement plaster. *Cement-Plaster from Plasterco, Tex.* 615 (618).

Rates on rough-rolled glass from Sergeant, Pa., to Toronto, Ont., and Montreal, Que., not shown to be unreasonable, as compared with rates from Port Allegany, which is located in adjoining group. To place Sergeant on an equality with Port Allegany would disturb existing group adjustment. *Sergeant Glass Co. v. P. R. R. Co.* 622 (624).

In making group rates there must necessarily be a dividing line, and between points in different groups near that line some difference in rates is inevitable. *Id.* (624).

GROUP RATES—Continued.

Proper increased rates on lumber from California to points of destination in Colorado on the C., B. & Q. R. R. east of Brush and Sterling, Colo., not justified. Lumber to Eastern Colorado, 687 (688).

GROUPS.

Coal fields of Colorado are divided into groups for rate-making purposes, and what is known as the Trinidad group is the basic rate district of the coal fields. Coal and Coke from New Mexico Points, 681.

HANDLING AND WHARFAGE CHARGES. *See also* Loading and Unloading.

Handling and wharfage charges imposed by defendants at Port Tampa, Fla., on shipments of coal from north Atlantic ports to Tampa, Fla., found unreasonable to extent of 25 cents per long ton. Reparation awarded. Tampa Fuel Co. v. A. C. L. R. R. Co. 231 (235).

HEARING.

In view of the conclusion reached herein, no good purpose would have been served by the postponement of the hearing in this case, to await disposition of case now before the Illinois court. Memphis Merchants Exchange v. I. C. R. R. Co. 378 (386).

HISTORY OF RATES. *See* Past Rates.**ICING.** *See also* Relcing.

Separate charges in addition to the rate of transportation for the refrigeration and icing of dairy products within official classification territory and from points in New England territory found not justified. National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co. 392 (409).

About 3,000 pounds of ice is loaded in the refrigerator car for dairy products. Rates on Dairy Products, 700 (710).

IMPORT AND DOMESTIC RATES.

Rates on imported blackstrap molasses from Gulf ports and on domestic blackstrap from New Orleans, La., to Chicago and rate points and to Milwaukee, Wis., not shown to have been unreasonable. Scully Syrup Co. v. A. G. S. R. R. Co. 567.

IMPORTS.

Solid asphalt and asphaltum are produced in the island of Trinidad and the republic of Venezuela; that from Trinidad being imported through and refined at Newport News, Va., and certain Gulf ports; that from Venezuela through Atlantic ports and refined at Maurer, N. J. Western Trunk Line Rate Increases, 481 (484).

IN-AND-OUT RATES.

Commission knows of no sound basis on which a New Orleans miller can claim the right to ship rough rice from all the Texas belt to New Orleans and forward the product on a parity of in-and-out rates with the miller who is situated in the rice belt and whose haul of rough rice to the mill is but 60 or 70 miles as compared with a haul of several hundred miles to New Orleans. Southern Rice Growers' Asso. v. T. & N. O. R. R. Co. 90 (94).

The advantage in the in and out bound rates on blackstrap to Milwaukee over St. Louis is still greater at Chicago and Chicago rate points. Scully Syrup Co. v. A. G. S. R. R. Co. 567 (572).

INSURANCE.

Failure of the P. R. R. Co. to provide for reimbursement to shippers of the amount which insurance charges on grain stored in elevator B at Girard Point, Philadelphia, Pa., exceeded similar charges which would have been incurred had grain been stored in new concrete elevator at same point, found to result in undue prejudice. Reparation awarded. Graff & Son v. P. R. R. Co. 200.

INTERCHANGE OF TRAFFIC.

The S. P. rail system is so located that its highest development is naturally dependent upon interchanging traffic with water lines at the Gulf ports. S. P. Co. Ownership of Atlantic S. S. Lines, 168 (173-174).

INTEREST.

Even if the petitioner had no proprietary interest in these boat lines, it would continue to have a substantial interest in maintaining and improving the through service. S. P. Co. Ownership of Atlantic S. S. Lines, 168 (174).

INTERMEDIATE RATES. See Through and Local.

INTERVENERS.

There is no provision in the act for compelling any party to intervene in a proceeding before the Commission. R. R. Comm. of La. v. A. H. T. Ry. Co. 45 (48).

INVESTMENT.

Investment of Rogers-Brown Iron Co. at Tyler and Sykes, Pa., is \$939,949.10. Buffalo Union Furnace Co. v. B. & S. B. R. Corp. 218 (221). The adverse effect upon the prosperity of a business does not justify the Commission in requiring a carrier to maintain rates which are less than reasonable, notwithstanding the fact that they were voluntarily established and have influenced the location of industries. Fruits and Vegetables, 291 (313).

The Inland Navigation Company has invested from \$1,500 to \$2,000 in shore equipment at St. Louis. Inland Nav. Co. v. W. Ry. Co. 588 (590).

ISSUE.

Upon a record dealing with so many commodities which differ radically in transportation characteristics, and involving such a broad and complicated readjustment of rates between large territories of origin and destination, it is manifestly impossible to fully consider and to finally dispose of every question which may arise out of the requirements of particular shippers or the peculiarities of individual situations. Fruits and Vegetables, 291 (314).

JOBGING RATES.

Theory of equalization of jobbing rates is impracticable, even if it might be assumed that the rate factors necessary to bring about such an equalization would always be fair and reasonable. Hutchinson Traffic Bureau v. C., R. I. & P. Ry. Co. 689 (693).

JOINT RATES.

Cancellation of joint rates on grain, grain products, and hay, from Indianapolis, Ind., etc., via Cincinnati, Ohio, to certain Indiana points, rendering applicable higher combination of intermediate rates justified. Grain from Indianapolis, Ind., 113.

Proposed increased rates on coal from mines on the C. & O. in West Virginia and Kentucky to Brooksville, Ky., justified in part. Coal to Brooksville, Ky., 115.

Southern Ry. tariff canceled in so far as it eliminated joint rates with the Illinois Central. Present unrestricted routing required on shipments from Rockport group to C. F. A. territory. Lumber from Indiana Stations, 117 (120).

On rough staves and heading from Arkansas and Louisiana points to Oak Cliff, Tex., found unreasonable to the extent that they exceed rates to Dallas, Tex. Dallas Cooperage & Woodenware Co. v. G., C. & S. F. Ry. Co. 241 (242).

JOINT RATES—Continued.

The mere existence of combination rates rather than joint rates on lumber from Snyders, Wis., to points in Minnesota and North Dakota on the G. N. and N. P. railways, without showing of unreasonableness or undue prejudice does not justify corrective measures, and it does not appear that there is a public necessity for the joint rates sought. *Connor Lumber & Land Co. v. G. N. Ry. Co.* 243 (246).

On cattle and calves from points in Utah, Idaho, and Oregon to Los Angeles, Cal., not shown to be unreasonable. *American National Live Stock Asso. v. O. S. L. R. R. Co.* 247 (249).

Defendants required to establish joint rates on hogs from points in Utah, Idaho, and Oregon to Los Angeles, not in excess of 90 per cent of the rates maintained on cattle from same points. *Id.* (250).

Rates on milk and cream from Poultney, Vt., and Cambridge, N. Y., to Forest Hills, Mass., found unreasonable and joint rates prescribed for future. *Milk and Cream Investigation*, 875 (877).

Increased rates on certain traffic between New York, N. Y., and points in Rhode Island on the line of the Rhode Island Co., found justified. *Hartford & New York Transp. Co., Joint Rates*, 417.

Cancellation of joint rates on lumber and other forest products from Pacific coast points on the G. N. Ry., the N. P. Ry., and connecting lines to destinations in Michigan on the Copper Range R. R. found not justified. *Calumet, Mich., Lumber*, 441.

Proposed increased joint rates, any quantity, on cotton goods from southeastern points to C. F. A. territory, other than Chicago and Chicago rate territory, found not justified. *Southeastern Cotton Goods*, 530.

Rates charged on coal from Du Quoin, Ill., to Cape Girardeau, Mo., re-consigned to Gideon, Mo., found unreasonable. Reparation awarded. *Graves Coal & Coke Co. v. St. L. & S. F. R. R. Co.* 579.

Rates from Falco, Ala., on lumber to destinations north of Ohio River, found unreasonable and prejudicial as compared with rates from Galloway, Fla., the junction point and other blanket points. Reparation awarded. *McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co.* 581.

JURISDICTION.

Shipments of coal to Tampa, Fla., from north Atlantic ports did not move under any common control, management, or arrangement for continuous carriage, but rail movement from Port Tampa to Tampa, and handling and wharfage at Port Tampa, were part of interstate transportation and subject to the Commission's jurisdiction. *Tampa Fuel Co. v. A. C. L. R. R. Co.* 231 (233).

The liability of common carriers for the loss of or damage to shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Commission. This liability should be kept separate from the freight charges. *Lost or Damaged Freight Replacement*, 257 (258).

Commission's jurisdiction challenged in fixing divisions in proceeding in which for the first time an order prescribing joint rates is sought. *Cybur Lumber Co. v. N. O. & N. E. R. R. Co.* 268 (272).

Commission deems it unnecessary upon view taken, to consider or decide the question of jurisdiction, upon rehearing, under which the water service of the Canada Atlantic Transit Company as now operated may be extended. *Application of G. T. Ry. Co. of Canada*, 286 (288).

JURISDICTION—Continued.

Conclusion announced in previous report that Commission has no jurisdiction over joint through express rates from points in the Dominion of Canada to Buffalo, N. Y., adhered to on rehearing. *Fairmont Creamery Co. v. A. E. Co.* 724.

KANSAS CITY TERRITORY. Defined. Rates on Dairy Products, 700 (716).

LAKE AND RAIL RATES. *See also* Rail-and-Lake Rates; Rail-Lake-and-Rail Rates.

Proposed increased rates, rail-lake-and-rail, and rail-and-lake, from points in New York and New England to Duluth and St. Paul, Minn., and related points, with certain exceptions, found justified. *New England Rail and Lake*, 162 (164).

LEGAL RATES.

If the F. & A. R. R. participated in movement of shipment, it did so without lawful tariff authority, and the Commission is unable to determine the lawful charges. *Bagdad Land & Lumber Co. v. G. R. & I. Ry. Co.* 251 (253).

It is the duty of defendants to collect, and of shippers to pay, the rates lawfully applicable to interstate shipments. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378 (391).

Fifth-class rate on shipment of bales consisting of manufactured cotton, woolen, and jute waste from Worcester, Mass., to Athens and Sweetwater, Tenn., found to have been legally applicable. *Mayer & Co. v. S. Ry. Co.* 727.

LENGTH OF HAULS.

The movement of live poultry is largely made up of comparatively short hauls to the concentration points where it is dressed, whereas the movement of dressed poultry from the concentration points is made up of long hauls. Rates on Dairy Products, 700 (710).

LIGHTERAGE.

On rehearing, charges collected on shipments of hay from points in Canada to Norfolk, Va., lightered at New York, found to have been unreasonable and reparation awarded. *Cruikshank & Robinson v. P. R. R. Co.* 151 (153).

LIMITATION OF ACTION.

Disposition made of complaint renders unnecessary determination of the statutory question. *Wheland Co. v. A. G. S. R. R. Co.* 53 (54).

Shipments not delivered within two years barred by statute. *Tampa Fuel Co. v. A. C. L. R. R. Co.* 231.

Not shown to be unreasonable to apply to shipments by express the four-month provision limiting the carriers' liability against claims for loss and damage. Released rates, 510 (512).

Six months' rule: Claim for reparation on certain carloads of gasoline and naphtha from North Fort Worth, Tex., to Kiefer, Okla., found to have been abandoned. *Gulf Refining Co. v. St. L., S. F. & T. Ry. Co.* 757.

LIMITATION OF LIABILITY. *See also* Loss and Damage.

The act, as amended, fixes upon the carrier liability for the full actual loss, damage, or injury caused by it to ordinary live stock and invalidates any limitation or attempted limitation of that liability, wherever or in whatever form it is found. Released Rates, 510 (513).

LOADING.**In general:**

Record indicates average loading on export traffic may be somewhat greater than on domestic traffic, but there is probably very little difference in transportation conditions. Eastern Export Iron and Steel Case, 5 (8).

Minimum weights increased to secure heavier loading as an economic measure and to conserve equipment. Carload Minimums, 259 (260).

Dairy products: Density of car lot shipments of dairy products shown. National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co. 392 (401).

Dairy products: Average car loading of dairy products in western classification territory, shown. Rates on Dairy Products, 700 (709).

Fruits and vegetables: It is estimated that fruits and vegetables are loaded to about 33 per cent of the car capacity and that the tare weight of the cars in which they move averages about 83 per cent of the gross weight, as against 43 per cent of ordinary freight. Fruits and Vegetables, 291 (299).

Oysters: Average loading of carload shipments of oysters in the shell is only slightly greater than the average loading of shucked oysters. Platts v. N. Y., N. H. & H. R. R. Co. 504 (507).

Posts and poles: Load much lighter than do other forest products taking the lumber rate. Duluth Log Co. v. M., St. P. & S. S. M. Ry. Co. 415 (417).

Salt: Average loading of a car of rock salt in bulk is about 31 tons, and of evaporated salt from 20 to 25 tons. Sterling Salt Co. v. P. R. R. Co. 276 (277).

LOADING AND UNLOADING.

Proposed change in rule of western classification which provides for the assessment of loading and unloading charges of 1½ cents per 100 pounds on l. c. l. shipments transported at c. l. rates to the basis of assessing charges based on the carload minimum weights, found not justified.

L. C. L. Minimum Handling Charges, 266.

LOCAL RATES.

Local rates charged to and from Grand Rapids, Mich., on wheat from Michigan and Indiana points to points south of Ohio River, milled at Grand Rapids, found to have been unreasonable. Reparation awarded. Valley City Milling Co. v. G. R. & I. Ry. Co. 75.

Proposed increased rates from Arkansas City to the Mississippi River crossings found justified. Lumber from Arkansas City, Ark., 423 (428).

LOCATION.

La Crosse, Wis.: Location shown. La Crosse Shippers' Asso. v. C., M. & St. P. Ry. Co. 605 (606).

LONG-AND-SHORT HAUL.**In general:**

Where the former rates from points in Louisiana west of the Mississippi River were not higher than the former rates from New Orleans or the rates to Colorado common points, the increased rates, to the extent to which they exceed the present rates from New Orleans or the rates to Colorado common points, or to which they increase the discrimination against intermediate points in violation of the long-and-short-haul rule of the fourth section, not justified. Fruits and Vegetables, 291 (332).

LONG-AND-SHORT HAUL—Continued.

In general—Continued.

Increased rates on watermelons, cantaloupes, and muskmelons from Arkansas, Oklahoma, and Missouri justified in part, but where the former rates were not higher than to Colorado common points the increased rates, to the extent to which they exceed the rates to Colorado common points or to which they increase the discrimination against intermediate points in violation of the long-and-short-haul rule, not justified. *Id.* (333).

Authority to charge lower rates on fuel oil in tank cars from Kansas and Oklahoma refineries to Omaha, Nebr., than to intermediate points denied. *Fairmont Creamery Co. v. A., T. & S. F. Ry. Co.* 515 (519).

In the absence of proof of damage to the shipper an incidental contravention of the long-and-short-haul rule over an alternative route does not of itself afford sufficient basis for an award of reparation. *La Crosse Shippers' Asso. v. C., I. & L. Ry. Co.* 520 (524).

Bagdad Junction, Fla.: Application for authority to continue rates on turpentine-still fixtures from Paxton to Pensacola, Fla., lower than rates to Bagdad Junction, an intermediate point, denied. *Bagdad Land & Lumber Co. v. G. R. & I. Ry. Co.* 251 (254).

Concord and Kannapolis, N. C.: Authority to continue rates on cotton towels from Griffin, Jackson, and Columbus, Ga., to Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., etc., lower than rates from Concord and Kannapolis, N. C., denied. *Cannon Mfg. Co. v. S. Ry. Co.* 625 (629).

Gallatin and Maplewood, Tenn.: Advance in rates allowed on molding sand from Louisville and Newport, Ky., to Nashville, Tenn., will remove violation of long-and-short-haul rule in rates to intermediate points. *Molding Sand to Nashville, Tenn.* 108 (109).

Illmo, Mo.: Denial of the application of the C. & E. I. R. R. Co. to continue rates on coal from Illinois mines to Chaffe and Cape Girardeau, Mo., lower than rates to Illmo, Mo., and other intermediate points, affirmed on rehearing. *Moore v. St. L. & S. F. R. R. Co.* 749 (752).

Jackson, Miss.: Authority to continue rates on grain and grain products from Vicksburg, Miss., to Mobile, Ala., lower than rates to Jackson and other intermediate points denied. *Green v. A. & V. Ry. Co.* 662 (678).

Jacksonville, Fla.: Carriers whose lines are 15 per cent or more longer than direct routes granted authority to meet rates of direct lines and maintain higher rates at intermediate points, provided rates to such points do not exceed rates authorized or lowest combinations. *Fruits from Florida*, 595 (604).

La Crosse, Wis.: Maintenance of a lower rate to points on the La Crosse & Southeastern Ry. than to La Crosse on traffic from Chicago routed via the latter point was in contravention of the long-and-short-haul rule, and, in absence of proof of damage, reparation denied. *La Crosse Shippers' Asso. v. C., I. & L. Ry. Co.* 520 (524).

Lumberton, Miss.: Authority to continue rates on yellow-pine lumber from Lumberton, Miss., to Deferiet, N. Y., lower than rates to and from intermediate points denied. *Wells Lumber Co. v. G. & S. I. R. R. Co.* 132 (134).

LONG-AND-SHORT HAUL—Continued.

Memphis, Tenn.: In establishing rates between Memphis and certain points in Arkansas based on distance, the shortest workable route, whether over two or more lines, should be used. The carriers having circuitous routes, however, may meet the short-line rates at common points while carrying higher rates to intermediate points, provided these rates are made up on the distance scale and provided the lowest combination is not exceeded. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (124-125).

Mound, La.: Allegation of violation of long-and-short-haul rule in rates on logging-car bodies to Mound, La., from Kennett, La., not substantiated, as the rates to Tallulah, the farther distant point, are applicable only to logging cars and logging-car trucks. *Zelnicker Supply Co. v. St. L. & S. F. R. R. Co.* 73 (74).

Narrows, Ky.: Allegation of violation of long-and-short-haul rule in rate on rough gum lumber from Richey, Miss., to Narrows, in that it exceeded rate to Owensboro, Ky., not sustained, as distance over route of movement is more than 15 per cent greater. *Kentucky-Indiana Hardwood Co. v. S. Ry. Co. in Miss.* 154 (155).

Ohio and Mississippi river crossings: Authority to cancel proportional rates from points in Indiana, Illinois, and Michigan to Ohio and Mississippi river crossings on traffic destined to southern territory, without observing the long-and-short-haul provision, denied. *Proportional Rates to Ohio River Crossings*, 458 (466).

Ohio River crossings: Authority to continue to charge proportional rates from points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin to Ohio River crossings, lower than rates from intermediate points, denied. *Id.* (470).

Texas points: Authority to continue rates on pine ties from Paxton, Lamont, Sacul, Trawick, Nivac, Thoms, Splendora, Shawnee, and Huntington, Tex., to El Paso, Tex., when destined to Pearson, Mexico, higher than rates in effect from farther distant points in Texas and Louisiana, to which said points are intermediate, denied. *Crawford v. T. & P. Ry. Co.* 753 (754).

Wisconsin points: Carriers authorized to continue and to establish the same rates on bituminous coal from certain Lake Michigan ports to Eau Claire, Chippewa Falls, Menomonie Junction, and Menomonie, Wis., as are in effect from Duluth, Minn., to same destinations, and to continue higher rates to certain intermediate points, provided that rates to intermediate points from Lake Michigan ports shall not exceed rates from Duluth and that present rates to intermediate points are not exceeded. *La Crosse Shippers' Asso. v. C., M. & St. P. Ry Co.* 605 (610).

LOSS AND DAMAGE. See also Four-Months' Rule.

Cancellation of western trunk-line rule providing for waiving the freight charges when portions of shipments have been lost or damaged and duplicates thereof shipped to replace such lost or damaged articles, found justified. Uniform rules recommended. *Lost or Damaged Freight Replacement*, 257 (258).

The shipper or lawful holder of the receipt or bill of lading for ordinary live stock should be free to press his claim for recovery in full for loss, damage, or injury caused by the carrier, and rates for the transportation of such live stock may not be stated in a manner to require a representation of the value. *Released Rates*, 510 (514).

The loss and damage claims on cotton piece goods are nominal. *Southeastern Cotton Goods*, 530 (533).

LOSS AND DAMAGE—Continued.

Total claim payments on different dairy products by three roads operating in western classification territory, shown. *Rates on Dairy Products*, 700 (707-708).

LOW RATES.

If carriers establish rates lower than could be required by the Commission, they must be free from discrimination. *Proportional Rates to Ohio River Crossings*, 458 (465).

Commission may not require the maintenance of low rates whose publication is directly attributable to competitive influences. *New England Lumber Rates (No. 2)*, 641 (644).

LOWREY TARIFF.

Arrangements entered into between carriers and embodied in the Lowrey tariff should not be employed as a basis for increasing the through charges to shippers unless the reasonableness of such increased charges was made clear. *Consumers Co. v. M., St. P. & S. S. M. Ry. Co.* 561 (565).

MANUFACTURED ARTICLES.

When glucose, mixed with 10 per cent of refiner's sirup, is packed in cans or bottles, the mixture is known as corn sirup and has a market value in excess of the raw glucose by about 40 per cent; but when packed in cans and shipped in box cars pay a freight rate no higher than the rate on glucose shipped either in box cars or tank cars. *National Sirup Co. v. C. & N. W. Ry. Co.* 228 (230).

MAP.

Railways and Kentucky stations affected by proposed increased rates on petroleum. *Petroleum to Kentucky Stations*, 35 (36).

Showing grouping of originating points with respect to rates on lettuce to Chicago. *Fruits and Vegetables*, 291 (297).

Showing the South Bend, Milwaukee, Davenport, Peoria, and Chicago groups. *Proportional Rates to Ohio River Crossings*, 458 (460).

Showing the C. F. A. territory and the Great Lakes. *Ohio Rail and Lake*, 525 (526).

MARKET COMPETITION. See Competition (Market).**MARKETS.**

No function of Commission to stabilize markets. *Southern Rice Growers' Asso. v. T. & N. O. R. R. Co.* 90 (95).

For many years Memphis, Henderson, Evansville, and Cairo have been markets for the handling of grain, which moves in large volume from Illinois to and through all of these points. *Memphis Merchants' Exchange v. I. C. R. R. Co.* 378 (380).

Southeastern, Carolina, and Mississippi Valley territories afford consuming markets for grain shipped through the Ohio River crossings and Memphis. *Id.* (380).

As much as 65 to 85 per cent of the surplus dairy production of many of the states west of Chicago moves into that city and the greater portion of it to the east thereof. Sixty-five per cent of Minnesota creamery butter is said to find its way to New York City. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (399).

Markets for New England lumber is restricted to the New England states and the eastern part of New York state. *New England Lumber Rates (No. 2)*, 641.

MEASURE OF RATES.

The coastwise lines fixed the measure of rates between the northern ports and the south, and competition between the all-rail routes and routes in connection with the various coastwise lines resulted in fixing uniform differentials in favor of the latter in rates between the south and west and the northern ports and interior eastern points. *Boston-New York Proportional Rates* (No. 2), 208 (205).

MEETING COMPETITION.

Proportional rate adjustment was established to meet eastern competition in the southeast, and lines composing the short routes have elected to meet this competition not only from Chicago, but from the South Bend Group because direct routes have done so. *Proportional Rates to Ohio River Crossings*, 458 (468).

MILEAGE RATES.

Scale of rates prescribed by Commission in *City of Memphis case*, 39 I. C. C., 256, held to be reasonable for clean rice between points in Arkansas, Louisiana, and Texas. Rice from Texas and Louisiana (No. 2), 29 (32).

Mileage scale of rates for distance of 252 miles in Minnesota, Michigan, and Wisconsin, shown. *Connor Lumber & Land Co. v. G. N. Ry. Co.* 243 (245).

MINIMUM WEIGHT.

Acids: Proposed increased minimum weight on acids in tank cars to shell capacity of tank justified. *Western Trunk Line Rate Increases*, 481 (482).

Corn: Charges collected on shipment of corn from Trinidad, Colo., to Raton, N. Mex., based on minimum weight found to have been legally applicable. Contention that charges should have been based on actual weight of shipment not sustained. *Seldomridge Grain Co. v. A., T. & S. F. Ry. Co.* 213 (214).

Fruits and vegetables: Increased minimum weights on, from points east of the Mississippi River, found justified. *Fruits and Vegetables*, 291 (315).

Packing-house products: Proposed increase in minimum weight from 20,000 to 21,000 pounds to compute the minimum charge on shipments of packing-house products, fresh meats, etc., in peddler cars, in C. F. A. territory, not justified. *Peddler Car Minimum*, 189 (142).

Potatoes: Reasonable carload minima prescribed for shipments of potatoes from points in Minnesota to points in official classification territory east of the Indiana-Illinois state line. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.* 545 (549).

Screenings: Proposed increased minimum weights on carloads of grain screenings, oat clippings, and oat dust from Fort Worth, Tex., and other points to various interstate points, found justified. *Carload Minimums*, 259.

MISROUTING.

Routing specified on carload of cedar posts from Tigerton, Wis., to Letcher, S. Dak., was complete, and it was the duty of initial line to deliver to the connecting line by a direct connection over which the lower rate applied. Reparation awarded. *Torrey Cedar Co. v. C. & N. W. Ry. Co.* 135 (136).

MISROUTING—Continued.

Rate inserted in bill of lading did not apply over route specified. *Held*, when both the rate and the route are inserted by the shipper in the bill of lading and they do not coincide, it is the duty of the initial carrier's agent to ascertain from the shipper before forwarding the shipment whether he desires the rate or route to govern. Reparation awarded for misrouting. *Rudiger, Assignee, v. I. C. R. R. Co.* 149.

Routing instructions on shipment of rough gum lumber from Richey, Miss., to Narrows, Ky., were complete and it should have been delivered by defendant to the Illinois Central at Winona, Miss., instead of Columbus, Miss. Reparation awarded for misrouting. *Kentucky-Indiana Hardwood Co. v. S. Ry. Co. in Miss.* 154 (155).

It is the duty of the receiving carrier in the absence of instructions by the shipper to route via the cheapest reasonable route available. *La Crosse Shippers' Asso. v. C., I. & L. Ry Co.* 520 (525).

"MISSIONARY" RATES.

Were established for purpose of developing business. Fruits and Vegetables, 291 (293, 319).

MISSISSIPPI VALLEY TERRITORY.

Defined. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378 (380).

MIXED CARLOADS.

Lower rates on mixed carloads of lumber and doors than on straight carloads of lumber was unjustly discriminatory against complainants, but this discrimination has now been removed. *Sand Point Lumber & Pole Co. v. G. N. Ry. Co.* 59 (61).

Change in tariff rule whereby the amount of molasses included with sugar or honey in a mixed carload shipment may not exceed one-third of the total weight of the shipment, not justified. Molasses from Texas and Louisiana (No. 2), 85 (89).

Tariff providing that when fruits and vegetables taking a minimum of more than 20,000 pounds are included in a mixed carload and their weight exceeds one-third of 20,000 pounds, the highest carload minimum provided for any article in the car applies, found justified. *Fruit and Vegetables*, 291 (316).

Proposed cancellation of rates on toilet paper in mixed carload shipments with unprinted papers, not justified. *Western Trunk Line Rate Increases*, 481 (499).

Southern classification provides that dressed poultry and fresh meat may be shipped in straight or mixed carloads on the same classification basis. *Rates on Dairy Products*, 700 (715).

MIXTURES.

Fifth-class rate on shipment of bales consisting of manufactured cotton, woolen, and jute waste from Worcester, Mass., to Athens and Sweetwater, Tenn., found to have been legally applicable. *Mayer Co. v. S. Ry. Co.* 727.

NEW LINE.

It can not fairly be assumed that if a new railroad line was built between two points, A and B, between which other rail lines had long been operating, the obligation to carry the same rates from A to B as was carried by the older lines would be cast upon the new carrier. *Bay State Milling Co. v. G. L. T. Corp.* 338 (346).

NEW LINE—Continued.

If a railroad has gone into the hands of a receiver, and a new corporate style or title had been assumed, it might be argued that the new company, new in name only, succeeded to the obligations of its predecessor so far as the shipping public is concerned, and could not increase rates without justifying them under requirements of section 15. *Id.* (346).

It can not be accepted without proof that the duty of providing arrangements the same as was formerly practiced by the railroad-owned boat lines is incumbent on a new water carrier or upon such carrier in connection with rail carriers in the Chicago and Milwaukee switching districts. *Grain Products Rates via Great Lakes*, 550 (555).

NEW RATES.

Rates under attack are initial rates, not increased rates, and do not come within the purview or intent of section 15 as to the justification of their reasonableness. *Bay State Milling Co. v. G. L. T. Corp.* 388 (347).

NONJOINDER OF PARTIES. *See Parties.*

NONTRANSIT GRAIN. *See Transit Arrangements (Surplus Billing).*

NOTICE OF ARRIVAL.

Notice of arrival of shipment of hay at Tampa, Fla., shipped from Dryden, Mich., did not fully comply with carrier's demurrage rules, but it does not appear that cause of delay in accepting shipment was due to defect in notice. Demurrage not found unlawful. *Miller-Jackson Grain Co. v. P., O. & N. R. R. Co.* 147 (148).

OPERATING CONDITIONS.

Problems encountered in the operation of the Bangor & Aroostook Railroad shown. *New England Lumber Rates*, (No. 2), 641 (642, 653).

Along the entire line of the El Paso & Southwestern Railroad the population is sparse, the country being largely desert with low density of traffic. *Hutchinson Traffic Bureau v. C., R. I. & P. Ry. Co.* 689 (691).

ORDER OF COMMISSION.

Commission has no power to suspend tariff which became effective on November 1, 1916, but Texas authorities urge that the same effect as to intrastate traffic can be secured by vacating order of July 7, 1916, entered in 41 I. C. C., 88. Commission unable to agree with this suggestion. *B. R. Comm. of La. v. A. H. T. Ry. Co.* 45 (48).

Commission's suspension order relative to suspension of the school-ticket provision was misunderstood by defendant, who suspended the entire tariff. Upon its correct interpretation the increased fares were promptly collected. *Edmond v. G. & S. S. Ry. Co.* 164 (166).

Upon original hearing Commission required the maintenance of a maximum rate, but before the order became effective it was stayed by the granting of a petition for rehearing. *National Syrup Co. v. C. & N. W. Co.* 228 (229).

No order deemed necessary, in view of penal provisions of the statute, where the carriers charged intrastate rates on grain from Illinois points to Cairo and reshipping rates to final destinations in lieu of through interstate rates lawfully applicable. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378 (391).

After tariffs publishing increased rates to Missouri River cities was filed, respondents applied to Commission for permission to make corresponding increases to Des Moines; but as order had not expired application was denied. *Western Trunk Line Rate Increases*, 481 (490).

OUT-OF-LINE HAUL.

Carriers may make reasonable charges for out-of-line service rendered in instances where rice is milled at points which are not directly intermediate between the points of shipment of rough rice and ultimate destinations of the product. *Southern Rice Growers' Asso. v. T. & N. O. R. R. Co.* 90 (97).

OVERCHARGE.

Rate charged exceeded rate lawfully applicable. Party entitled to refund not named in proceeding; and if claim would now be presented by the proper party, it would be barred. *Wheland Co. v. A. G. S. R. R. Co.* 53 (54).

Charges collected on basis of erroneous weight. Reparation awarded. *Chicago Bridge & Iron Works v. P. & L. E. R. R. Co.* 68.

Involved ordered to be included in reparation. *Valley City Milling Co. v. G. R. & I. Ry. Co.* 75 (76).

Grain from various points to Melrose, Janesville, and Osakis, Minn.; Huron and Watertown, S. Dak.; and Lidgerwood, N. Dak., found to have been overcharged to extent that charges paid on the canceled tonnage exceeded those accruing on basis of the local rate to the milling point. *Melrose Milling Co. v. G. N. Ry. Co.* 741 (743).

Charges collected exceeded rate lawfully applicable. Reparation awarded. *Wells Lumber Co. v. G. & S. I. R. R. Co.*, 132; *Torrey Cedar Co. v. C. & N. W. Ry. Co.* 135 (136); *Kentucky-Indiana Hardwood Co. v. S. Ry. Co.* in Miss. 154; *Bagdad Land & Lumber Co. v. G. R. & I. Ry. Co.*, 251 (252).

OWNERSHIP.

Contended that its ownership of these steamship lines has had the effect of securing lower rates for the shipping public. *Held*, In so far as the S. P. Co. has initiated reductions in transcontinental rates, this has been directly caused by controlling competitive influences. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (174).

PACKING. See Perishable Freight; Breakage.

PANAMA CANAL ACT. See also Boat Lines.

One of its great purposes was to create independent shipping companies operating over water routes. It would be a singular impediment to impose on such companies, if as a condition precedent to their beginning operation they should be required to saddle themselves with joint rates and divisions imposed involuntarily upon predecessor lines, and with a view primarily of serving the ends of their railroad owners. *Bay State Milling Co. v. G. L. T. Corp.* 338 (347).

PAPER RATES.

Many of the rates on lumber from Shreveport, with which complainant compared the rates on silos from Crossett, are "paper rates," as there is no movement of lumber from Shreveport. *Crossett Lumber Co. v. A. & L. M. Ry. Co.* 500 (502).

At the time of rehearing carriers did not advertise or perform special refrigeration service, rates in sliding scale were therefore "paper rates." *Platts v. N. Y., N. H. & H. R. R. Co.* 504 (508).

PARITY OF RATES.

Effective with increased rates on molasses from New Orleans, respondents will be expected to place Texarkana and competing points upon a parity with respect to the privilege of mixing sugar and honey with molasses in mixed carloads. *Molasses from Texas and Louisiana (No. 2)*, 85 (89).

PARITY OF RATES—Continued.

Contended that competition between carriers and markets demands that the Ohio River crossings and Memphis should be, so far as the rates on grain to southeastern destinations are concerned, maintained on a parity. *Memphis Merchants' Exchange v. I. C. R. R. Co.* 378 (385).

PARTIES. See also Assignee, Damages.

Shipment found to have been overcharged and also to have been misrouted. Reparation awarded against all carriers participating in the movement for the illegal charges, and against the one carrier responsible for the misrouting. *Kentucky-Indiana Hardwood Co. v. S. Ry. Co.* in *Miss.* 154 (156).

Tariffs of Pennsylvania Company named no charges for the cleaning and disinfecting of cars used for shipments of live stock, but provided that freight transported thereunder would be subject to the published rules and regulations of participating lines. The Pennsylvania Railroad was a party to the above tariffs and its tariffs provided for the charges collected. Charges held to have been lawfully assessed. *Dunlevy Packing Co. v. P. Co.* 429.

While it is quite competent to compare rates and distances over a defendant's line with those over another line or lines not named as defendants, a fairer and more complete presentation of the situation would probably have been secured by naming as defendants all participating carriers interested in the adjustment. *La Crosse Shippers' Asso. v. C., I. & L. Ry. Co.* 520 (522).

Subsequent payment of undercharge by a stranger to the transportation record does not make such party a complainant in this proceeding. *Hearon v. I. C. R. R. Co.* 577 (578).

Non-joinder of:

The P. & R. Ry. Co. performed a service in connection with a shipment of coal ashes and cinder from Coatesville, Pa., to Carney's Point, N. J., but was not made a party defendant. Complaint dismissed. *Dupont de Nemours Powder Co. v. P. R. R. Co.* 227.

Complaint brought against carriers having lines wholly within the state of Texas referring to rules to which rail carriers in other states are parties, dismissed for lack of necessary parties. *McDavitt Bros., of Brownsville, Tex., v. St. L., B. & M. Ry. Co.* 695.

PASSENGER FARES.

Increased passenger fares between points in Connecticut on the Groton & Stonington Street Railway and Westerly, R. I., found reasonable. *Edmond v. G. & S. S. Ry. Co.* 164 (167).

PAST RATES.

In a proceeding before the Commission the history of rates involved is an element to be considered and sometimes has a material bearing upon the question of what rates should properly apply. This is particularly true if the former rates are shown to have been voluntarily maintained. *Green v. A. & V. Ry. Co.* 662 (674).

History of rates, ratings, and concentrating arrangements, on dairy products from 1896 to 1916, in western classification territory, shown. *Rates on Dairy Products*, 700 (701-704).

PEDDLER CARS.

Proposed changes in the rules governing shipments of packing-house products, fresh meats, and other articles, transported in peddler cars in C. F. A. territory, not justified. *Peddler Car Minimum*, 139.

PEDDLER CARS—Continued.

Peddler cars are cleaned, precooled, and loaded by the shipper, move on stated days, and contain large quantities assembled in one car for delivery along the same route, the load decreasing as the haul progresses. *Id.* (140).

PENALTIES. See Section 15.

"PENALTY" CHARGES.

"Penalty" charges referred to in connection with shipments in peddler cars, when not loaded to the required minimum. *Peddler Car Minimum*, 139 (141).

PERCENTAGE RATES.

Buffalo would be a 60 per cent point under strict application of the Chicago-New York percentage system, but for many years has rated all classes and commodities about 52 per cent of the Chicago-New York rates. *Eastern Export Iron and Steel Case*, 5 (10).

Percentage basis used in adjustment of class rates between Memphis and certain Arkansas points. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (127).

PERISHABLE FREIGHT.

Fruits and vegetables more perishable than fresh meats. *Fruits and Vegetables*, 291 (331).

In classification the perishable foods are ordinarily grouped under fruits, fish, meats, and vegetables. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (404).

History of methods for preparing and shipping dairy products for the past 30 years, shown. *Rates on Dairy Products*, 700 (704).

"PERMIT" SYSTEM.

Establishment of so-called "permit" system to relieve congestion, due to accumulation of hay at complainant's warehouse in New York, in lieu of embargoes, found to be unlawful. *New York Hay Exchange Asso. v. N. Y. C. R. R. Co.* 281 (284).

PICK-UP SERVICE.

Operated in connection with shipments of dairy products, and the cost of refrigeration is assessed against all commodities loaded in car making the pick-up run. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (407).

PIPE LINES.

Because of unsatisfactory service accorded by the Missouri Pacific, one of the oil companies contemplated the building of a pipe line from Delaware, Okla., to Coffeyville, Kans., a distance of 18 miles. *Gasoline from Coffeyville, Kans.*, 98 (99).

PITTSBURGH STEEL INTERESTS.

Threatened to build a line of their own to the seaboard if they did not get a reduction. *Eastern Export Iron and Steel Case*, 5 (9-10).

PLEADING AND PRACTICE.

Competitive point mentioned at hearing, but complaint does not allege that rates to competing point are unduly preferential, and defendants' objection to the introduction of testimony concerning the undue preferences and prejudices as between the alleged competitive point and the complaining cities must be sustained. *Dolan Fruit Co. v. O., B. & Q. R. R. Co.* 353 (356).

PORT-TO-PORT RATES.

Inequalities as exist in the port-to-port rates between New York and Galveston and New Orleans may be more fairly determined and corrected in independent proceedings. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (177).

POWER OF COMMISSION. *See* Delegation of Authority.

PRECOOLING.

Precooling reduces the cost of icing the vehicles of transportation. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (400).

Precooling in connection with shipments of dairy products. *Id.* (400).

PREFERENCES AND PREJUDICES. *See also* Discrimination; Relative Rates.

In general:

Practice of defendants in refusing to issue through bills of lading on shipments of forest products originating in certain territory, while continuing to issue such bills of lading on export shipments of the same commodities originating in other territory, not shown to be unduly prejudicial. *Evans Lumber Co. v. C. of G. Ry. Co.* 476 (480).

An embargo on fuller's earth by the M. & M. Transp. Co. not shown to have been unduly prejudicial. *Prudential Oil Corp. v. M. & M. Transp. Co.* 696 (699).

A showing that there was no accumulation of a particular commodity which was embargoed by a carrier does not of itself justify a finding of undue prejudice and disadvantage to shippers of said commodity in a case where there was an excessive accumulation of other freight. *Id.* (699).

Whether or not an embargo resulted in undue prejudice and disadvantage is determinable only upon consideration of all of the facts, circumstances, and conditions in a particular case. *Id.* (699).

Articles:

Beaver board: Rates on "beaver board" from Buffalo, N. Y., to points in C. F. A. territory found unjustly discriminatory to extent they exceed rates maintained on wood-pulp board. *Wall Board Rating*, 189 (193).

Chain hoists: Allegation by complainant that by applying second-class rating on chain hoists which they manufacture and giving the hoists manufactured by their competitors a third-class rating results in undue prejudice not sustained. *Industrial Traffic Asso. v. B. & O. R. R. Co.* 729 (730-731).

Chair stock: Rates found to be unreasonable and unduly prejudicial to the extent that they exceed rates on lumber from and to the same points. *Southern Lumber Co. v. C., C., C. & St. L. Ry. Co.* 13 (15).

Coal: Allegation that by charging the same rate on coal from Chicago to La Crosse as from Chicago to St. Paul, a more remote point, and according La Crosse lower rates than St. Paul on other commodities results in discrimination against coal, not sustained. *La Crosse Shippers' Asso. v. C., I. & L. Ry. Co.* 520 (523).

Coal and coke: Adjustment of rates on coal and coke from points in the Reynoldsville district, Pa., served by the B. & S. R. R. Corp. to Buffalo, Lackawanna, and Harriet, N. Y., etc., in so-called Buffalo-Black Rock switching district, found unduly prejudicial to extent that the group rate on coal from origin to destination exceeds 80 per cent of rate on coke from Tyler and Sykes, Pa., to Lackawanna. *Buffalo Union Furnace Co. v. B. & S. R. R. Corp.* 218 (222).

PREFERENCES AND PREJUDICES—Continued.

Articles—Continued.

Foundry facings: Apparent discrimination between the rates on foundry facings and on foundry flour and dry core compound between points in C. F. A. territory will be removed by the cancellation of the commodity rates in question. Foundry Supply Mfrs. Asso. v. A. A. R. R. Co. 734 (736).

Damages: Failure of the P. R. R. Co. to provide for reimbursement to shippers of the amount which insurance charges on grain stored in elevator B at Girard Point, Philadelphia, Pa., exceeded similar charges which would have been incurred had grain been stored in new concrete elevator at same point found to result in undue prejudice. Reparation awarded. Graff & Son v. P. R. R. Co. 200.

Localities:

Arkansas City, Ark.: Rates on lumber from Arkansas City to C. F. A. and various other points found to be unduly prejudicial to the extent that they exceed rates from Helena, Ark., by more than 2 cents. Lumber from Arkansas City, Ark., 423 (428).

Austin and Albert Lea, Minn.: Rates on fresh and cured meats to the Mississippi River when destined to points east of the Indiana-Illinois state line from Austin higher than those from Mason City, and from Albert Lea more than one-half cent per 100 pounds higher than those from Austin, found prejudicial to Austin and Albert Lea. Hormel & Co. v. C. G. W. R. R. Co. 23 (28).

Cadillac and Jennings, Mich.: Sixth-class rates on lumber and other forest products from, to various destinations, not shown to be unduly prejudicial as compared with commodity rates maintained from competing points. Cadillac Lumber Exchange v. A. A. R. R. Co. 636 (640).

Chicago, Ill.: To publish lower carload rates to Chicago and the failure to increase the rates to Chicago and Chicago rate territory while increasing them to competitive points would constitute undue prejudice and disadvantage to the points not included in Chicago rate territory. Southeastern Cotton Goods, 530 (536).

Chicago, Ill.: Import and domestic rates on blackstrap molasses from Gulf ports to Milwaukee, Chicago, and Chicago rate points not found prejudicial as compared with rates to St. Louis. Scully Syrup Co. v. A. G. S. R. R. Co. 567 (576).

Cybur, Miss.: Rates on lumber and forest products from points on the Cybur, Gulf & N. W. R. R. to Alabama, Georgia, Louisiana, North Carolina, and South Carolina, in excess of joint rates from stations on the Miss. Cent., etc., found unduly prejudicial and through route and nonprejudicial joint rates required to be established. Cybur Lumber Co. v. N. O. & N. E. R. R. Co. 268 (273).

Falco, Ala.: Rates on yellow-pine lumber from Falco to destinations north of the Ohio River found prejudicial to the extent that they exceeded by more than 2-cent rates from Galliver, Fla., the junction point. Reparation awarded. McGowan-Foshee Lumber Co. v. F., A. & G. R. R. Co. 581 (587).

Galveston and New Orleans: Certain practices of the S. P. Co. in operation of its Atlantic S. S. lines between Galveston and New York and between New Orleans and New York are unduly discriminatory to the public interest. S. P. Co. Ownership of Atlantic S. S. Lines, 168 (178).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Gladstone, Mich.: Rates on lumber from Gladstone to Chicago, Milwaukee and other points not found unreasonable or prejudicial. Rates via two-line hauls involved do not exceed rate sought by more than a reasonable switching charge. *Northwestern Cooperage & Lumber Co. v. M., St. P. & S. S. M. Ry. Co.* 629 (632).

Hazel Spur, Mo.: Rates on coal from southern Illinois mines to Hazel Spur, Mo., not found unduly prejudicial in that they exceed rates from the same points to Chaffee and Cape Girardeau, Mo., more distant points. *Moore v. St. L. & S. F. R. R. Co.* 749 (752).

Hutchinson, Kans.: Contention that class rates from Hutchinson, Kans., to points in Oklahoma, Texas, and New Mexico, are unduly preferential to same points from Kansas City and St. Joseph, Mo., Omaha and Lincoln, Nebr., Atchison, Leavenworth, Topeka, Emporia, and Wichita, Kans., and certain points in Oklahoma, not sustained. *Hutchinson Traffic Bureau v. C., R. I. & P. Ry. Co.* 689 (694).

Jackson and Meridian, Miss.: It can not be said that defendants' rates to points taking the New Orleans basis of rates subject Jackson and Meridian to undue prejudice, unless defendants' rates to Jackson and Meridian are too high. *Green v. A. & V. Ry. Co.* 662 (676).

Johnstown, Pa.: Refusal of P. R. R. Co. to apply Clearfield district rates on coal to eastern destinations from mines served by the Johnstown & Stony Creek R. R., while extending such rates to other mines throughout the Clearfield district, found to be unduly prejudicial to complainant. *Johnstown, Pa., Switching.* 654 (660).

La Crosse, Wis.: Rates on petroleum oil and products from Lawrenceville, Ill., to La Crosse, Wis., not shown to be unduly prejudicial compared with fifth-class rates from the midcontinental oil fields, C. F. A. territory, Chicago, and St. Louis. *La Crosse Shippers' Asso. v. C., B. & Q. R. R. Co.* 438 (440).

La Crosse, Wis.: Rate on bituminous coal from various producing points in West Virginia to La Crosse, Wis., not shown to be unreasonable or unduly prejudicial compared with rate to St. Paul. *La Crosse Shippers' Asso. v. C., M. & St. P. Ry. Co.* 605 (614).

Lake Ports: Rates on spring wheat to New York and other eastern destinations via Lake Michigan ports not found unreasonable or unduly prejudicial as compared with rates from same points of origin to same destinations via Lake Superior ports. *Bay State Milling Co. v. G. L. T. Corp.* 338 (349).

Memphis, Tenn.: In removing undue prejudice against Memphis, the class rates between Memphis and certain Arkansas points must not exceed Arkansas intrastate rates by an amount greater than a reasonable bridge toll for the haul across the Mississippi River. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (125). ♦

Michigan points: Rates on printing paper and wrapping paper from Michigan points to C. F. A. territory found to be unduly prejudicial as compared with rates from points in Fox River and Wisconsin River groups in Wisconsin. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 16 (22).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Milwaukee, Wis.: Defendant's practice of absorbing switching charges at Milwaukee, Wis., on grain accorded transit at interior Wisconsin points and forwarded east via Milwaukee and lake-and-rail lines, while refusing to absorb such switching on like traffic accorded transit at Milwaukee, found to subject millers at Milwaukee to undue prejudice. *Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.* 725 (726).

Napanee, Ind.: Evidence adduced insufficient to sustain allegation of unjust discrimination and undue prejudice in the rating on silo staves and rafters from Napanee, Ind., to various destinations as compared with rating from competing points in Indiana, Michigan, Illinois, and Ohio. *Napanee Lumber & Mfg. Co. v. B. & O. S. W. R. R. Co.* 236 (239).

Odanah, Wis.: Complainant not shown to have been damaged by the reduction in rates on lumber from the Hurley, Wis., group, to Chicago, without an equal reduction in the joint rates from Odanah, Wis., to various destinations alleged to have been unduly prejudicial. *Stearns Lumber Co. v. C. & N. W. Ry. Co.* 215 (217).

Paducah, Ky.: It is unnecessary to pass upon the allegation that the rates on lumber commodities from certain Arkansas and Louisiana points gives Cairo a preference over Paducah, as a general investigation of the rates and classification of lumber and lumber products is now pending before the Commission. *Paducah Board of Trade v. I. C. R. R. Co.* 587 (544).

Peoria, Ill.: Rates on grain by-products from Peoria, Ill., to points in C. F. A. territory found unduly prejudicial, during period in question, compared with lower rates from St. Louis. *American Milling Co. v. A., T. & S. F. Ry. Co.* 431 (484).

St. Louis, Mo.: Charges effected by combination on Chicago of the rates from St. Louis to points east of Buffalo via the Great Lakes Transit Corp. when applied to through shipments claimed by the complainant to be unduly prejudicial to St. Louis. *Grain Products Rates via Great Lakes*, 550 (559).

Silica, Ohio: Rates on glass sand to and from Silica, Ohio, not shown unduly prejudicial. *National Silica Co. v. T., A. & W. Ry. Co.* 63 (64).

Snyders, Wis.: Rates on lumber from Snyders, Wis., to points in Minnesota and North Dakota on the G. N. and N. P. railways, not shown to be unduly prejudicial because of lower rates from groups less distant. *Connor Lumber & Land Co. v. G. N. Ry. Co.* 243 (246).

Southern Illinois group: Rates on bituminous coal from mines in the, to St. Charles, Mo., found unduly prejudicial as compared with rates from the Belleville, Ill., group. Proper relationship of rates prescribed. *Big Muddy Coal & Iron Co. v. I. C. R. R. Co.* 157 (159).

Texarkana, Ark.-Tex.: Effective contemporaneously with increased rate on molasses from New Orleans, respondents will be expected to place Texarkana and competing points upon a parity with respect to the mixing privilege. *Molasses from Texas and Louisiana (No. 2)*, 85 (89).

PREFERENCES AND PREJUDICES—Continued.**Localities—Continued.**

Toledo, etc.: Use of class rates, governed by official classification, from Toledo, Cleveland, Springfield, Canton, Dayton, and Columbus, Ohio, Detroit, Mich., etc., to points in the southeast, and use of proportional commodity rates from Chicago, Peoria, and Milwaukee, based on Ohio River crossings to the southeast, results in undue prejudice to Toledo and other points named. *Traffic Bureau, Toledo Commerce Club v. C., H. & D. Ry. Co.* 446 (457).

Vale, Oreg.: Rate on cedar poles from Sand Point, Idaho, to Vale, Oreg., not shown to be unduly prejudicial compared with rate from Sand Point to Boise, Idaho. *Chaney Co. (Ltd.) v. O. S. L. R. R. Co.* 420 (422).

Persons:

Rates on logs from Spur 294 and Peck's Spur, Mich., to Green Bay, Wis., were unduly prejudicial against complainant in favor of shippers located at more distant points, but this discrimination has been removed. Reparation denied. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 65 (66).

Establishment of so-called "permit" system to relieve congestion, due to accumulation of hay at complainant's warehouse in New York, in lieu of embargoes, which gave to some shippers an undue preference over other shippers, found unlawful. *New York Hay Exchange Asso. v. N. Y. C. R. R. Co.* 281 (284).

Refusing to establish through routes and joint rates in connection with the Inland Navigation Co., no higher than joint all-rail rates between the same points in which they participate, defendants discriminate against complainant and subject traffic routed via the barge line to unreasonable prejudice and disadvantage. *Inland Nav. Co. v. W. Ry. Co.* 588 (594)

PRICE. *See* Value of Commodity.

PRODUCTION.

Dairy products: Production of butter and eggs between years 1889 and 1909 in western, official, and eastern territories, shown. *Rates on Dairy Products*, 700 (705).

Live-stock industry in Idaho has been steadily increasing since the institution of state and federal irrigation projects. *American National Live Stock Asso. v. O. S. L. R. R. Co.* 247 (248).

Rice: 45,455 pounds of rough rice required to produce 80,000 pounds of clean rice. *Southern Rice Growers' Asso. v. T. & N. O. R. R. Co.* 90 (93).

Strawberry crop in territory contiguous to Davies Spur, Wash., for years 1915, 1916, and 1917 shown. *Davies Spur, Wash., Express Rates*, 143 (145).

PROOF. *See* Damages.

PROPORTIONAL RATES. *See also* Advance in Rates (Rice).

Proportional sixth-class rates charged on printing and wrapping paper from Wisconsin points to C. F. A. territory, while full sixth-class rates apply from Michigan, found to be prejudicial to Michigan points. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 16 (21).

Proportional class rates are a part of the rate structure, made so because of competitive conditions which do not govern the rates locally within the territory, and because of the difference in conditions it can not be said that undue preference results from the use of the proportional rate on interterritorial traffic. *Id.* (21).

PROPORTIONAL RATES—Continued.

Proposed proportional rates on gasoline, petroleum, and products from Delaware, Okla., to Coffeyville, Kans., for purpose of equalizing the through rates in effect via the electric traction line and its connections with those in effect via the Missouri Pacific, found not justified. Gasoline from Coffeyville, Kans., 98 (100, 101).

Proposed cancellation of proportional commodity rates from Toledo, Ohio, to Ohio River crossings and Virginia cities, resulting in increased rates to points in the south, found not justified. Vehicles from Toledo, Ohio, 111, 112.

Proposed cancellation of proportional rates between New York, N. Y., and points in southeastern New England, applicable on traffic handled south of New York by coastwise steamship lines, found not justified. Boston-New York Proportional Rates (No. 2), 203 (212).

Proportional rates on lumber from points on the Cybur, Gulf & N. W. R. R. destined to points in C. F. A. territory, when stopped at Slidell, La., for creosoting should not exceed proportional rates for similar movement from stations on the Miss. Cent. east of Brookhaven, Miss. Cybur Lumber Co. v. N. O. & N. E. R. R. Co. 268 (274).

Use of class rates, governed by official classification, from Toledo, Cleveland, Springfield, Canton, Dayton, and Columbus, Ohio, Detroit, Mich., etc., to points in the southeast and use of proportional commodity rates from Chicago, Peoria, and Milwaukee, based on Ohio River crossings to the southeast, results in undue prejudice to Toledo and other points named. Traffic Bureau, Toledo Commerce Club v. C., H. & D. Ry. Co. 446 (457).

The history of the rate adjustment from Chicago and related groups to Ohio River crossings on traffic destined to southern points, develops the fact that eastern competition was the controlling reason for the establishment of proportional rates from said groups to the river crossings. Proportional Rates to Ohio River Crossings, 458 (461).

Authority to cancel proportional rates from points in Indiana, Illinois, and Michigan to Ohio and Mississippi River crossings on traffic destined to southern territory, without observing the long-and-short-haul provision, denied. *Id.* (466).

Proposed cancellation of proportional rates on asphalt and asphaltum to Missouri River cities and related points justified; proposed increased local rates to Missouri River cities and proposed increased local and proportional rates to interior Iowa cities not justified. Western Trunk Line Rate Increases, 481 (486).

Proportional rates on fruits from Jacksonville, Fla., to various southeastern points not found unreasonable, or the through rates of which they form a part, as compared with rates from producing points to Jacksonville. Fruits from Florida, 595 (598).

Rate of 8 cents on coarse grain and grain products from Vicksburg, Miss., when originating at St. Louis, Mo., to Jackson, Miss., found justified. Green v. A. & V. Ry. Co. 662 (678).

"PROPRIETY."

Law requires Commission to be satisfied of the "propriety" of proposed rates before permitting them to become effective. Eastern Export Iron and Steel Case, 5 (11).

PUBLISHING RATES.

Action of navigation company in transporting through interstate shipments in connection with the rail line, without filing its tariffs with the Commission, is unlawful. Inland Nav. Co. v. W. Ry. Co. 588 (591).

RAIL-AND-LAKE RATES. *See also* Lake-and-Rail Rates; Rail-Lake-and-Rail Rates.

Proposed increased rail-and-lake, and rail-lake-and-rail rates from the Scranton, Williamsport, and Northumberland groups in Pennsylvania to Lake Michigan and Lake Superior ports and to St. Paul and Minneapolis, Minn., etc., found justified. Scranton-Williamsport Rail and Lake, 182 (185).

Proposed increased rail-and-lake rates from C. F. A. points to Lake Superior ports via the Northwestern Steamship Co. and to Lake Huron ports via the Detroit & Cleveland Nav. Co., found justified. Ohio Rail and Lake, 525 (528, 529).

RAIL AND WATER. *See also* Advance in Rates; Boat Lines; Lake-and-Rail Rates; Rail-Lake-and-Rail Rates.

Allegation that the payment of charge to private boat owner hauling traffic for defendant transportation company for transportation of potatoes in barrels from river landing to Seabrook, S. C., destined to New York, N. Y., rendered applicable the carload rate from Seabrook to New York, not sustained. Long & Bellamy Bros. Co. v. C. & W. C. Ry. Co. 186.

Handling and wharfage charges imposed by defendants at Port Tampa, Fla., on shipments of coal from north Atlantic ports to Tampa, moving water and rail, found unreasonable. Reparation awarded. Tampa Fuel Co. v. A. C. L. R. R. Co. 231 (235).

Proposed increased rates on certain traffic between New York, N. Y., and points in Rhode Island on the lines of the Rhode Island Co., found justified. Hartford & New York Transp. Co. Joint Rates, 417.

All-rail and rail-and-water rates on cotton towels from Kannapolis and Concord, N. C., to eastern port cities and interior eastern cities held unreasonable to extent they exceeded by more than 3 cents per 100 pounds the rates on cotton piece goods. Cannon Mfg. Co. v. S. Ry. Co. 625 (628).

RAIL-LAKE-AND-RAIL RATES. *See also* Lake-and-Rail Rates; Rail-and-Lake Rates.

Combination rail-lake-and-rail rates on wheat from Minneapolis to complainants' mills in southern Minnesota and southwestern Wisconsin, there milled in transit and sent forward through Milwaukee to New York and other eastern destinations, not shown to be unreasonable or unduly prejudicial compared with rates via Duluth. Bay State Milling Co. v. G. L. T. Corp. 338 (342).

Proposed cancellation of joint through rail-lake-and-rail commodity rates on products and by-products of grain from Argo, Ill., to various destinations east of Buffalo not justified, except with reference to Glucose. Grain and Grain Products from Argo, Ill., 359 (361).

Respondents required to establish joint through rail-lake-and-rail rates from St. Louis to eastern basing points and points taking the same rates via Chicago and the Great Lakes Transit Corp. wherever there are joint through lake-and-rail rates from Chicago to the same points. Amount of such rates not determined. Grain Products via Great Lakes, 550 (560).

RAILROAD COMPETITION. *See* Competition (Railroad).**RATE-BREAKING POINT.**

New Orleans is a rate-breaking point on traffic from Texas to Charleston, S. C. Southern Rice Growers' Assn. v. T. & N. O. R. R. Co. 90 (94).

RATE COMPARISONS.

Table comparing rates from New Orleans and from group 2 to various destinations with the current and former rates from other points for similar distances. Fruits and Vegetables, 291 (301).

RATE COMPARISONS—Continued.

Rate comparisons must be analogous to be effective; mere comparison between rates does not necessarily tend to establish the reasonableness of either. *Traffic Bureau of Nashville v. L. & N. R. R. Co.*, 366 (369).

REASONABLENESS OF RATES.

In a proceeding of this character it is not appropriate for the Commission to undertake to pass upon the relative or absolute reasonableness of particular rates. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (177).

In gauging the reasonableness of rates proposed by one respondent the Commission must consider the rates of other carriers serving the same general territory. *New England Lumber Rates (No. 2)*, 641 (653).

RECONSIGNMENT.

Charges for the reconsignment of grain at Terre Haute, Ind., complained of was canceled after the complaint was filed. Complaint dismissed. *Cottrell v. C., T. H. & S. E. Ry. Co.*, 195 (196).

Charges collected on coal from Du Quoin, Ill., to Cape Girardeau, Mo., and reconsigned to Gideon, Mo., found unreasonable. Reparation awarded. *Graves Coal & Coke Co. v. St. L. & S. F. R. R. Co.*, 579.

REDUCTION IN RATES. See also Subsequently-established Rates.

In general: The S. P. Co. in establishing reductions in rates over the Sunset-Gulf Route has responded to the influence of competition via the all-water routes rather than that it has taken the lead in reducing transcontinental rates. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (174).

By carriers:

Reparation awarded on shipment of iron ore from Chalybeate Springs, Ga., to Knoxville, Tenn., on basis of rate subsequently established over route of movement. *Knoxville Iron Co. v. A., B. & A. R. R. Co.*, 747.

Rate on certain carloads of naphtha from North Fort Worth, Tex., to Klefer, Okla., found unreasonable to extent it exceeded rate subsequently established. Reparation awarded. *Gulf Refining Co. v. St. L., S. F. & T. Ry. Co.*, 757 (759).

By Commission:

Rate on lumber from Springston, Idaho, to Antelope, Mont., should not exceed rate from Spokane to Antelope by more than 2 cents per 100 pounds. *Sand Point Lumber & Pole Co. v. G. N. Ry. Co.*, 59 (62).

Rate of 18 cents prescribed as reasonable for fuel oil from Okmulgee, Okla., to Crystal City, Mo. *Pittsburgh Plate Glass Co. v. St. L. & S. F. R. R. Co.*, 71.

Rate on printing paper from Augusta, Me., to Franklin, N. H., prescribed as reasonable for traffic in the opposite direction. Reparation awarded. *International Paper Co. v. M. C. R. R. Co.*, 159 (161).

Rates on bananas from New Orleans, La., and other Gulf ports to Grand Island and Hastings, Nebr., found unreasonable and reasonable rates prescribed. Reparation awarded. *Dolan Fruit Co. v. C., B. & Q. R. R. Co.*, 353 (358).

Rate on coal from western Kentucky mines on the L. & N. R. R. to Nashville, increased from 80 to 90 cents per ton, found not justified, and rate of 80 cents per ton prescribed as reasonable. Reparation awarded. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 366 (374).

Rates on petroleum fuel oil from Kansas and Oklahoma refineries to Omaha, Nebr., increased since January 1, 1910, found not to be justified, and reasonable maximum rates prescribed. *Fairmont Creamery Co. v. A., T. & S. F. Ry. Co.* 515 (519).

REDUCTION IN RATES—Continued.**By Commission—Continued.**

Rates on crossties found unreasonable and defendant required to maintain rates thereon which do not exceed rates on lumber from which the ties are made. *Baxter & Co. v. F. A. & G. R. R. Co.*, 633 (635).

Rates conceded by defendants as being reasonable for certain classes from Hutchinson, Kans., to points on the E. P. & S. W. R. R. in New Mexico, ordered established. *Hutchinson Traffic Bureau v. C., R. I. & P. Ry. Co.* 689 (694).

REFRIGERATION.

In view of conflicting testimony and uncertainty of record, proposed increased refrigeration charges from points in Idaho, Oregon, Montana, and Utah to various destinations have not been justified. *Fruit Refrigeration*, 102 (107).

Watermelons do not move under refrigeration, and kind of cars used not shown. *Fruits and Vegetables*, 291 (305).

Discontinuance of optional privilege and application of stated charges, found justified. *Id.* (317, 318).

Separate charges in addition to the rate of transportation for the refrigeration and icing of dairy products within official classification territory and from points in New England territory, not justified. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (409).

REFRIGERATOR CARS. See also Cars.

During fruit and vegetable shipping season about 47 per cent of total mileage of refrigerator cars used in that service is empty, and throughout the remainder of the year much of this equipment is idle, as it can not be used economically in transporting general traffic. *Fruits and Vegetables* 291 (299).

Require special cleaning, and at times extraordinary cleaning, to remove the effect of odor of a previous load. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (403).

Shippers of citrus fruits usually demand the refrigerator equipment because when reconsignment is necessary, icing is required, and no extra charge is made for this equipment for shipments not made under ice. *Fruits from Florida*, 595 (603).

REFUSAL.

Complainants found to have been damaged by refusal of the initial carrier to receive and transport a shipment of lumber from Pearch, Va., to Struthers, Pa., over an available route originally specified by the shipper. *Wistar, Underhill & Nixon v. C. & O. Ry. Co.* 254 (256).

REHEARING. See also Reopening; Supplemental Report.

Rates on printing and wrapping paper from Michigan points to C. F. A. territory found unduly prejudicial in original report. Case reopened to determine what further changes should be made for the purpose of making the rates from Wisconsin bear a reasonable relationship to the sixth-class basis now prevailing throughout official classification territory. *Michigan Paper Mills Traffic Asso. v. A. & V. Ry. Co.* 16 (17).

On rehearing, charges collected on shipments of hay from points in Canada to Norfolk, Va., lightered at New York, found to have been unreasonable and reparation awarded. *Cruikshank & Robinson v. P. R. R. Co.* 151 (158).

Upon a review of the record in the light of the additional evidence adduced on rehearing, the findings and order of the original report are reversed and the complaint dismissed. *National Syrup Co. v. C. & N. W. Ry. Co.* 228.

REHEARING—Continued.

Upon rehearing, rate for interstate transportation of alfalfa meal in carloads from Kearney, Nebr., to Omaha, Nebr., not found to have been unreasonable. *Omaha Alfalfa Milling Co. v. U. P. R. R. Co.* 264.

Former finding that proposed increased rates on bituminous coal were justified from Illinois mines to certain points in Missouri, affirmed on rehearing. *Coal to Glencoe, Mo.*, 412.

Upon rehearing, conclusion announced in previous report that Commission has no jurisdiction over joint through express rates from points in the Dominion of Canada to Buffalo, N. Y., adhered to. *Fairmont Creamery Co. v. A. E. Co.* 724.

Former finding that rate on coal from southern Illinois mines to Hazel Spur, Mo., was not shown unreasonable, and denial of authority to the C. & E. I. R. R. Co. to continue rates on coal from these mines to Chaffe and Cape Girardeau, Mo., lower than rates to Illmo, Mo., and other intermediate points, affirmed on rehearing. *Moore v. St. L. & S. F. R. R. Co.* 749 (752).

REICING.

Reicing charge at Fort Madison, Iowa, on packing-house products shipped from Wichita, Kans., to points east of the Indiana-Illinois state line found to have been unreasonable to extent it exceeded charges from points on and east of the Missouri River. Reparation awarded. *Cudahy Packing Co. v. A., T. & S. F. Ry. Co.* 262 (263).

RELATIONSHIP OF RATES. See also Comparative Rates (Dairy Products).

Commission does not think it advisable to prescribe from this record any relationship between rates on coke from Connellsville and coal from the Reynoldsville districts, Pa. *Buffalo Union Furnace Co. v. B. & S. R. R. Corp.* 218 (222).

RELATIVE RATES. See also Preferences and Prejudices (Localities).

Augusta, Me.: Rates on printing paper from Franklin, N. H., to Augusta, Me., compared with rates from Berlin, N. H., and Turners Falls, Mass. *International Paper Co. v. M. C. R. R. Co.* 159 (160).

Austin, Minn.: The mere fact that the per car-mile earnings are somewhat higher on fresh and cured meats from Austin than from the average of the Iowa cities is not proof that rates from Austin are unreasonable. *Hormel & Co. v. C. G. W. R. R. Co.* 23 (25).

Bridgeburg, Ontario: Rate on carload of fabricated steel from Pittsburgh, Pa., to, found unreasonable to extent it exceeded rate in effect to Shipyard, Ont. Reparation awarded. *Chicago Bridge & Iron Works v. P. & L. E. R. R. Co.* 68.

Chicago, Ill.: No reason shown why rates on sugar to St. Louis or Milwaukee and Chicago should serve as a guide in determining either the measure or the relationship of rates on blackstrap as between St. Louis and complaining points. *Scully Syrup Co. v. A. G. S. R. R. Co.* 567 (574).

Colorado and New Mexico points: Rates on coal and coke from Colorado and New Mexico producing points to various destinations compared with rates from Oklahoma, Illinois, Arkansas, and Alabama mines. *Coal and Coke from New Mexico points*, 681 (685).

El Paso, Tex.: Rates on eggs from Kansas City territory to El Paso, compared with rates to Fort Worth and other points in Texas and other States. *Rates on Dairy Products*, 700 (717).

RELATIVE RATES—Continued.

- Evansville, Ind.: Rate on structural iron from, to Bowling Green, Ky., alleged to be unreasonable. Rates cited by complainant and defendant in comparison are of little help in determining reasonableness of rate in issue. *Mesker & Co. v. L. & N. R. R. Co.* 55.
- Glencoe, Mo.: The fact that there are relatively lower rates to points on the Frisco would not of itself support a finding that the rates in question are unreasonable or otherwise unlawful. *Coal to Glencoe, Mo.* 412 (413).
- Hastings and Grand Island, Nebr.: Rates on bananas from New Orleans, La., and other Gulf ports to Hastings and Grand Island, Nebr., compared with rates to various other points. *Dolan Fruit Co. v. C., B. & Q. R. R. Co.* 353 (355).
- Hazel Spur, Mo.: Rates on coal from southern Illinois mines to Hazel Spur, Mo., compared with rates from Marion, Ill., to Valley Park and Southeastern Junction, Mo. *Moore v. St. L. & S. F. R. R. Co.* 749 (751).
- Jackson, Miss.: While rates on grain from St. Louis to Birmingham, Chattanooga, Montgomery, and Tuscaloosa, Ala., are not fairly comparable with rates from St. Louis to Jackson and Meridian, Miss., it appears that the rates assailed are upon a lower basis, excepting those from St. Louis to Mississippi Valley territory. *Green v. A. & V. Ry. Co.* 662 (671).
- Kannapolis and Concord, N. C.: Rates on cotton towels from, to eastern port cities and interior eastern cities compared with rates from Griffin, Jackson, and Columbus, Ga. *Cannon Mfg. Co. v. S. Ry. Co.* 625.
- La Crosse, Wis.: Rates on petroleum oil and products from Lawrenceville, Ill., to La Crosse, Wis., not found unreasonable compared with rates from Lawrenceville to Prairie du Chien, Wis. *La Crosse Shippers' Asso. v. C., B. & Q. R. R. Co.* 438 (440).
- La Crosse, Wis.: Rates on hides from La Crosse, Wis., to Chicago, Ill., compared with rates to Chicago from Cedar Rapids, Marshalltown, Waterloo, and Mason City, Iowa. *Natenshou & Co. v. C., M. & St. P. Ry. Co.* 731 (732).
- Louisville, Ky.: Proposed increased rates on petroleum not found unreasonable as compared with other rates in the same territory over the same lines for comparable distances. *Petroleum to Kentucky Stations*, 35 (44).
- Nashville, Tenn.: Rates on molding sand from Louisville and Newport, Ky., to Nashville, Tenn., compared with rates from Louisville, Newport, Cincinnati, and other Ohio River crossings to various consuming points in the south. Advances justified in part. *Molding Sand to Nashville, Tenn.* 108 (109).
- Nashville, Tenn.: Comparison of rates on coal from western Kentucky mines to Nashville with the rates to Louisville and Memphis was not vitiated by any substantial dissimilarity in surrounding conditions. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 366 (368).
- Nashville, Tenn.: Rate on coal from western Kentucky mines on the L. & N. to Nashville, compared with rates from same mines to western Tennessee junction points. *Id.* (372).
- Oak Cliff, Tex.: Rates on rough staves and heading from Arkansas and Louisiana points to Oak Cliff found unreasonable to the extent that they exceed rates from same points to Dallas. *Dallas Cooperage & Woodenware Co. v. G., C. & S. F. Ry. Co.* 241 (242).
- Tampa, Fla.: Rates cited in comparison with the rail haul on coal from Port Tampa to Tampa, moving by water from north Atlantic ports, are maintained under entirely different circumstances and conditions. *Tampa Fuel Co. v. A. C. L. R. R. Co.* 231 (234).

RELATIVE RATES—Continued.

Texarkana, Ark.-Tex.: Published state and interstate rates found to be unequal, but a difference in rates does not necessarily constitute an undue or unreasonable preference. *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (226).

RELEASED RATES. See also "Conditional Rate."

Sixth-class rate charged on shipment of granite from Hardwick, Vt., to Forest Park, Ill., not limited to value, found illegal and reparation awarded on basis of commodity rate limiting value to \$2 per 100 pounds. *Berlinger v. C. G. W. R. R. Co.* 137.

Rates authorized for the transportation by express of property, except ordinary live stock, dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value. *Released Rates*, 510.

If rates on ordinary live stock dependent upon declared value could lawfully be maintained without authorization by the Commission, there might and probably would be instances in which conflict would arise as between the liability imposed by the act upon the carrier and the prohibitions of section 10 of the act affecting shippers. *Id.* (513).

REOPENING.

Petitions of attorney general of Texas, Railroad Commission of Texas, and others, for reopening and leave to intervene, granted; for vacation of order of July 7, 1916, entered in 41 L. O. C., 83, denied. *R. R. Comm. of La. v. A. H. T. Ry. Co.* 45 (49).

RESHIPPING RATE.

Rate on coarse grain and grain products from St. Louis, Mo., to Jackson and Meridian, Miss., justified. *Green v. A. & V. Ry. Co.* 662 (678).

RESTORED RATES.

Opposition to increased rates seems to be due to fear that some difficulty may be experienced in having the export rates restored upon cessation of hostilities in Europe. *Eastern Export Iron and Steel Case*, 5 (9).

Rates on grain by-products from Peoria, Ill., to points in C. F. A. territory found unreasonable to extent that they exceeded rates formerly in effect and subsequently reestablished. Reparation awarded. *American Milling Co. v. A., T. & S. F. Ry. Co.* 481 (484).

RESTORED SERVICE.

Milling-in-transit service on rice from all rice-producing points in Texas, and in Louisiana, west of the Mississippi River, to interstate destinations, ordered restored. *Southern Rice Growers' Asso. v. T. & N. O. R. R. Co.* 90 (96).

RESTRICTED RATES.

C. & N. W. tariff named per car rate on horses from South Omaha, Nebr., to Wausau, Wis., in connection with the C., St. P., M. & O. Concurrence of latter line was limited to traffic originating or terminating on its line. Higher combination rate charged on shipments involved. *Held*, The per car rate was displayed to public as unrestricted. Reparation awarded. *Healy & Towle v. C. & N. W. Ry. Co.* 83.

RETROACTIVE.

Alleged discrimination of transit arrangement on cotton at Montgomery, Ala., originating on the L. & N. has been removed and record affords no basis for an order requiring retroactive extension of time limit. *Montgomery Cotton Exchange v. L. & N. R. R. Co.* 197.

Record affords no ground for an award of reparation on the basis of retroactive divisional allowances. *Cybur Lumber Co. v. N. O. & N. E. R. R. Co.* 268 (275).

RETURN MOVEMENT.

The mere fact that there is a return movement from Glencoe does not justify the requirement of a lower rate on coal to Glencoe than to other points on the M. P. Coal to Glencoe, Mo., 412 (414).

The cotton piece goods traffic lessens the empty return haul on the large number of cars used for grain and other products shipped into the southeast. Southeastern Cotton Goods, 530 (533).

REVENUE. See also Averages: Car-Mile Earnings; Earnings; Ton-Mile Revenue.

Revenue per loaded car on coal to Nashville compared with that of all freight handled by defendant during 1913, 1914, and 1915. Traffic Bureau of Nashville v. L. & N. R. R. Co. 366 (373).

A resulting increase in respondents' revenues can not alone be successfully urged against the propriety of the proposed rates. Fruits from Florida, 595 (601).

RICE BELT.

In Texas, and in Louisiana west of the Mississippi River, described. Southern Rice Growers' Asso. v. T. & N. O. R. R. Co. 90 (91-92).

RISK.

The risk involved in handling shipments by rail of volatile oils, benzine, etc., has led to strict rules as to placement of cars in trains. Petroleum to Kentucky Stations, 35 (40).

The risk attending the transportation of blackstrap molasses is almost negligible. Scully Syrup Co. v. A. G. S. R. R. Co. 567 (575).

ROUTES.

Combination rate charged on shipment of yellow-pine lumber from Lumberton, Miss., to Deferiet, N. Y., not found unreasonable as compared with lower rate over another route. Reparation awarded for overcharge. Wells Lumber Co. v. G. & S. I. R. R. Co. 132.

Rarely does a record before us present an array of witnesses whose testimony so uniformly indorses the character of the service as does this record. S. P. Co. Ownership of Atlantic S. S. Lines, 168 (173).

Complainants found to have been damaged by refusal of the initial carrier to receive and transport a shipment of lumber from Pearch, Va., to Struthers, Pa., over an available route originally specified by the shipper. Wistar, Underhill & Nixon v. C. & O. Ry. Co. 254 (256).

The mere fact that the rate between two general points is higher over one route than over another does not establish that the higher rate is unreasonable. Omaha Alfalfa Milling Co. v. U. P. R. R. Co. 264 (265).

In reaching Paducah via Thebes, from points in Arkansas and Louisiana, it is necessary to cross both the Mississippi and the Ohio Rivers, while only the former must be crossed if route via Memphis is used. Paducah Board of Trade v. I. C. R. R. Co. 537 (540).

Natural route to Paducah from Arkansas and Louisiana points is via Memphis. *Id.* (541).

ROUTING.

Increased rates justified and the limitation of application of said rates to routes specified, with certain exceptions, found justified. Lumber from Indiana Stations, 117 (120).

ROUTING INSTRUCTIONS.

Full routing instructions were not made in bill of lading due to error of carrier, but it is not shown that this was the real cause for shipment not being properly unloaded. Demurrage not found unlawful. *Miller-Jackson Grain Co. v. P., O. & N. R. R. Co.* 147.

When both rate and route are inserted in bill of lading by the shipper and they do not coincide, it is the duty of the initial carrier's agent to ascertain from the shipper before forwarding the shipment whether he desires the rate or route to govern. *Rudiger, Assignee, v. I. C. R. R. Co.* 149 (150).

RULES AND REGULATIONS.

Complaint brought against intrastate carriers with reference to rules to which carriers in other states are parties dismissed for lack of necessary parties. *McDavitt Bros. of Brownsville, Tex., v. St. L., B. & M. Ry. Co.* 695.

RULES OF PRACTICE.

By express provision of the act it was contemplated that this Commission make rules of practice, and compliance with the rules is in the interest of justice to all parties. *Paducah Board of Trade v. I. C. R. R. Co.* 537 (542).

SEASONAL TRAFFIC.

Majority of the lambs shipped from Utah, Idaho, and Oregon, move eastward between June and the latter part of October and the balance fattened for shipment to the Pacific coast between the months of November and April. *American National Live Stock Asso. v. O. S. L. R. R. Co.* 247 (248).

SECTION 4. See also Circuitous Routes; Long-and-Short Haul; Through and Local.

Violation of fourth section alleged could only have existed where movement from intermediate points was in trainload lots, a type of tariff provision which the Commission has never approved. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 65 (66).

Both present and proposed rates on molasses from New Orleans and points on the T. & P. Ry. to intermediate local points south of Texarkana are in violation of fourth section. Pending justification of the present rate, the proposed increase must be disapproved. Molasses from Texas and Louisiana (No. 2), 85 (88).

By making the suspended tariffs effective, the Rockport group will be placed upon the same basis as intermediate points, thus eliminating all fourth section departures. Lumber from Indiana Stations, 117 (119). Relief granted to carriers having indirect routes. *City of Memphis v. C., R. I & P. Ry. Co.* 121.

Not necessary to pass upon alleged violation of long-and-short haul in view of finding made under section 1. Grain and Grain Products from Argo, Ill., 359 (361).

The reasonableness of an increased rate can not be established by simply showing that departures from the fourth section are thereby removed. Traffic Bureau of Nashville *v. L. & N. R. R. Co.* 366 (370).

The construction given section 4 by the Supreme Court, did not prove efficacious in correcting the evils sought to be corrected by it, the Congress, under the 1910 amendment laid an absolute inhibition upon a departure from the long-and-short-haul rule, except in special cases authorized by the Commission. *Green v. A. & V. R. R. Co.* 662 (677).

SECTION 10.

If rates on ordinary live stock dependent upon declared value could lawfully be maintained without authorization by the Commission, there might and probably would be instances in which conflict would arise as between the liability imposed by the act upon the carrier and the prohibitions of section 10 of the act affecting shippers. *Released Rates*, 510 (515).

SECTION 15. *See also* Burden of Proof.

No order for future necessary on account of carrier's failure to receive and transport shipment as originally routed by the shipper, in view of the penalties provided by the act for the willful failure to comply with the provisions of section 15. *Wistar, Underhill & Nixon v. C. & O. Ry. Co.* 254 (256).

SERVICE.

Rarely does a record before us present an array of witnesses whose testimony so uniformly indorses the character of the service as does this record. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (173).

SHORT-LINE DISTANCE.

The short-line distance from Buffalo to New York is 411 miles via the D., L. & W. *Bay State Milling Co. v. G. L. T. Corp.* 338 (343).

SLIDING SCALE.

Rates in sliding scale apply only when special refrigeration service is performed. *Platts v. N. Y., N. H. & H. R. R. Co.* 504 (508).

SOUTHEASTERN RATE TERRITORY.

Defined. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378 (379).

SPREAD OF RATES.

Proposed spread in rates between Chicago and Pittsburgh, on traffic to Pacific coast terminals for export, found justified. *Western Export Iron and Steel Case*, 129 (131).

No justification appears for the present spread between the rate from group 1 and the rate from group 4 of the southern Illinois mines. *Big Muddy Coal & Iron Co. v. I. C. R. R. Co.* 157 (158).

There is no reason for the continuance from Argo, Ill., of a 17-cent rate, rail-lake-and-rail, at a spread of 8 cents below the all-rail rate and 5½ cents below the rail-lake-and-rail rate carried by competitors at Hammond and Roby, Ill. *Grain and Grain Products from Argo, Ill.*, 359 (362).

STARE DECISIS.

When the Commission, upon a given state of facts, reaches a conclusion regarding a certain rate it will adhere to that conclusion in subsequent proceedings regarding the same rate, unless (a) some new facts are brought to its attention; (b) conditions are shown to have undergone a material change; or (c) it proceeded on a misconception or misapprehension. *Traffic Bureau of Nashville v. L. & N. R. R. Co.* 366 (369).

STATE AND INTERSTATE.

Proceeding reopened for further hearing on question of rates prescribed from Shreveport to Texas points caused by discriminatory Texas state rates, the order of July 7, 1916, entered in 41 I. C. C., 83, to remain in full force and effect. *R. R. Comm. of La. v. A. H. T. Ry. Co.* 45 (49).

Only by establishing a uniform class-rate scale between Memphis and Arkansas points, which the carriers may use in adjusting their class rates intrastate, can a practical solution of the question of discrimination be reached. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (123).

STATE AND INTERSTATE—Continued.

Increased intrastate passenger fares between points in Connecticut on the Groton & Stonington Street Railway and Westerly, R. I., found reasonable by Public Utilities Commission of Connecticut, and the interstate fares found reasonable by the Commission. *Edmond v. G. & S. S. Ry. Co.* 164 (167).

Interstate carload class and commodity rates between Texarkana, Tex., and points in Arkansas found to be unequal when compared with Arkansas intrastate rates, but a difference in rates does not necessarily constitute an undue or unreasonable preference. *Texarkana Freight Bureau v. St. L., I. M. & S. Ry. Co.* 224 (226).

Practice of defendants in charging intrastate rates on grain originating in Illinois to Cairo and the reshipping rates thence to destinations in southeastern Carolina, and Mississippi Valley territories, found to have been unlawful. *Memphis Merchants Exchange v. I. C. R. R. Co.* 378.

If rates approved by state authority cause undue discrimination against interstate commerce, it is the duty and within the power of the Commission to require the removal of the discrimination without requiring the reduction of reasonable interstate rates. *Id.* (387).

The mere maintenance of a rate for movement of traffic wholly within a state lower than a rate found reasonable by this Commission for the local state portion of a through interstate movement does not of itself constitute undue discrimination within the meaning of the act. *Id.* (387).

In a case which merely calls to the Commission's attention the fact that a state rate is lower than an interstate rate on the same traffic from and to the same points the Commission has no authority or power to condemn the state rate and take action which would be warrant to carriers to increase it to the level of the applicable interstate rate. *Id.* (387).

Only in cases where the rates prescribed by state authorities necessarily operate to unduly prefer a state over an interstate shipper, or to otherwise interfere with the proper application of rates prescribed by this Commission, that the authority of the federal law is properly to be exercised. *Id.* (387).

The question as to whether a shipment is inter or intra state "must be determined by the essential character of the commerce," which is governed by the intent of the parties controlling the movement of the traffic, and this must be ascertained from all of the pertinent facts, circumstances, and conditions, and "not by mere billing or forms of contract." *Id.* (388).

STATE RATES.

Factor of combination rate on threshing machine from Grand Island, Nebr., to Webber, Kans., was a state rate not on file. Complaint dismissed. *Savage v. A., T. & S. F. Ry. Co.* 70.

Intrastate rate of 8 cents on coarse grain from Meridian, Jackson, and Vicksburg, Miss., was originally established under compromise with the Mississippi commission, which it approved for distances not exceeding 50 miles; this rate was later reduced to 3 cents to Jackson by order of the Mississippi commission and 3.5 cents to Meridian, following decision by the Supreme Court of the U. S. *Green v. A. & V. Ry. Co.* 662 (660).

STOPPAGE IN TRANSIT. See also Transit Arrangements.

Rates applicable on certain carloads of onions from South Deerfield and Hatfield, Mass., to Barclay street, New York, N. Y., with instructions to hold at Sixtieth street for orders, found to have been unreasonable. Reparation awarded. *Rosenblum v. B. & M. R. R.* 435 (437).

STORAGE.

Complainant failed to indicate on bill of lading that shipment was for export, which deprived him of free storage allowed. Demurrage rules applicable to export shipments at Boston and East Boston, Mass., not found unreasonable. *Moore Stave Co. v. B. & A. R. R. Co.* 679 (680).

SUBSEQUENTLY ESTABLISHED RATES. *See also* Reduction in Rates (By Carriers).

Commodity rates on ashes, clinders, and foundry dirt, established subsequent to movement, found to be reasonable. Class rates charged found to have been unreasonable. Reparation awarded. *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.* 1 (3).

The existence of a lower rate to a near-by point and the subsequent establishment of that rate to the point in issue do not, of themselves, warrant a condemnation of the rate charged. *Rosenblum v. N. Y., P. & N. R. R. Co.* 67 (68).

The establishment of a joint rate over a different route from the route of movement is not enough to condemn the combination rate applicable over the route of movement. *Duluth Log Co. v. M., St. P. & S. S. M. Ry. Co.* 415 (416).

SUBSTITUTION.

Contended by complainant that they should be allowed to substitute other tonnage for that represented by the canceled credits on grain and products. *National Casket Co. v. S. Ry. Co.*, 31 I. C. C., 687, cited and followed. *Melrose Milling Co. v. G. N. Ry. Co.* 741 (743).

SUPPLEMENTAL REPORT. *See also* Rehearing; Reopening.

Following original report, distance scale of maximum class rates between Memphis and Arkansas points prescribed, and carriers required to remove discrimination found to exist. *City of Memphis v. C., R. I. & P. Ry. Co.* 121.

Upon rehearing, *Held*, The existing service by water of the Canada Atlantic Transit Co. is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that an extension thereof will neither exclude, prevent, nor reduce competition on the route by water here under consideration. Application of *G. T. Ry. Co. of Canada*, 286 (290).

SURPLUS BILLING. *See* Transit Arrangements.**SWITCHING.**

In view of the conflicting testimony, and especially in the absence of other evidence to show whether the freight rates do include compensation for transporting the ice contained in the bunkers and for switching the cars to and from the icing plants, *Held*, That respondents have failed to justify increased charges. *Fruit Refrigeration*, 102 (107).

Charges for switching in connection with refrigerator equipment considered. *Fruits and Vegetables*, 291 (299).

Absorption of switching charges of connecting lines on competitive traffic is a general practice of railway companies all over the country. *Drayage Absorption*, 472 (474).

Increased through charges from points in the Chicago and Milwaukee switching districts resulting from the refusal of the Great Lakes Transit Corp., to absorb switching charges, not shown unreasonable. *Grain Products Rates via Great Lakes*, 550 (558).

SWITCHING—Continued.

Nonabsorption of portions of terminal switching charges on ice in Chicago switching district on the theory that the unusual conditions incident to transportation are such as to render it unprofitable to accord to it the full benefit of reciprocal arrangement, not found unreasonable. *Consumers Co. v. M., St. P. & S. S. M. Ry. Co.* 561 (563).

Refusal of P. R. R. to extend Clearfield district rates on coal from mines on Johnstown & Stony Creek R. R. interchanged at Johnstown, while applying such rates to shipments on connecting lateral lines found unreasonable and reparation awarded. *Johnstown, Pa., Switching*, 654 (660).

Defendant's practice of absorbing switching charges at Milwaukee, Wis., on grain accorded transit at interior Wisconsin points and forwarded east via Milwaukee and lake-and-rail lines, while refusing to absorb such switching on like traffic accorded transit at Milwaukee, found to subject millers at Milwaukee to undue prejudice. *Chamber of Commerce of Milwaukee v. C., M. & St. P. Ry. Co.* 725 (726).

TANK CARS.

Petroleum and products are very largely handled in tank cars owned by shippers and are generally returned empty. *Petroleum to Kentucky Stations*, 35 (39).

Privately owned tank cars are used in the transportation of blackstrap molasses from Gulf ports and carriers pay a mileage allowance for both loaded and empty movement. *Scully Syrup Co. v. A. G. S. R. R. Co.* 567 (574).

TAP LINES.

Through routes and joint rates required to be established on lumber and forest products from Cybur, Miss., to destinations south of the Ohio River, in connection with the Cybur, Gulf & Northwestern Railroad Co. *Cybur Lumber Co. v. N. O. & N. E. R. R. Co.* 268 (273).

TARIFFS.

Carriers are bound by their published tariffs, which must be construed in accordance with the rules contained therein, and they can not lawfully deny to a shipper the right to have shipments moved at the established rate over an open and available route named therein. *Wistar, Underhill & Nixon v. C. & O. Ry. Co.* 254 (256).

Tariff rule providing that railroad companies may furnish ice for property of third or a higher class when loaded in refrigerator cars, * * * must be read in its entirety and construed in the light of these carriers' long established practices thereunder. *National Poultry, Butter & Egg Asso. v. B. & O. S. W. R. R. Co.* 392 (398).

TESTIMONY. See also Service.

Respondents made no effort to reconcile the conflicting testimony offered in their behalf, but left the record in a state of confusion and uncertainty. Proposed increased refrigeration charges have not been justified. *Fruit Refrigeration*, 102 (107).

THROUGH AND LOCAL.

Application for authority to maintain through rate on machinery from Chattanooga, Tenn., to Blanks, La., in excess of aggregate of intermediates to and from New Orleans passed upon in another case, and relief was denied. *Wheland Co. v. A. G. S. R. R. Co.* 53 (54).

THROUGH AND LOCAL—Continued.

Contention that rates on bacon, l. c. l., from St. Louis, Mo., to Oakdale and Ward, La., exceed aggregate of intermediates to and from New Orleans, not sustained. *Sweet Provision Co. v. St. L., I. M. & S. Ry. Co.* 78.

Charges collected on shipments of turpentine still fixtures from Pittsburgh, Pa., and Columbus, Ohio, to Milton, Fla., found unreasonable to extent that they exceeded aggregate of rates to and from Pensacola, Fla. Reparation awarded. *Bagdad Land & Lumber Co. v. G. R. & I. Ry. Co.* 251 (252).

Authority to continue to charge for transportation of stoves and linings used in connection with the carload shipments of potatoes in the reverse direction from points in trunk line and C. F. A. territories to points in Minnesota, rates which are higher than the aggregate of the intermediate rates, denied. *Northern Potato Traffic Asso. v. B. & O. R. R. Co.* 545 (549).

THROUGH BILLS OF LADING.

Commission has no power to require the issuance of through bills of lading to foreign destinations, but may require the discontinuance of practices which create unjust discriminations or undue preferences. *Evans Lumber Co. v. C. of G. Ry. Co.* 476 (479).

Practice of defendants in refusing to issue, on shipments of forest products originating in certain territory, while continuing to issue such bills of lading on export shipments of the same commodities originating in other territory, not shown unreasonable. *Id.* (480).

THROUGH RATES.

Rates on fresh meats and packing-house products to the east from Austin, St. Paul, and Albert Lea, Minn., though equal to the combination of rates to and from Chicago, not found unreasonable. *Hormel & Co. v. C. G. W. R. R. Co.* 23 (26).

Through rate of 70 cents applicable and charged on shipment of potatoes from river landings via Seabrook, S. C., to New York, N. Y. Fact that complainant requested and paid for boat service, to move shipments ahead of time at which transportation company was to call for them, did not make carload rate of 65 cents applicable from Seabrook to New York. Complaint dismissed. *Long & Bellamy Bros. Co. v. C. & W. C. Ry. Co.* 186 (187).

Through rates from Crossett, Ark., to points east of the Mississippi River and south of the Ohio River, based on lowest combination of rates applicable via the route of movement not shown to be unjust or unreasonable. *Crossett Lumber Co. v. A. & L. M. Ry. Co.* 500 (502).

Present rates on ice in carloads from points in Wisconsin to team tracks and industrial sidings in the Chicago switching district not shown to be unreasonable, but complainant found to have been damaged by excessive charges collected during certain period covered by complaint. *Consumers Co. v. M., St. P. & S. S. M. Ry. Co.* 561.

Through rates on citrus fruits from Jacksonville, Fla., or proportional components thereof, not found unreasonable and revision of rates found justified. *Fruits from Florida*, 595 (598).

Increase in through rates on coal from mines on the Johnstown & Stony Creek R. R. to eastern destinations caused by refusal of P. R. R. to extend Clearfield district rates applied to competitive traffic, found not justified. *Johnstown, Pa., Switching*, 654.

THROUGH ROUTES AND JOINT RATES.

Prayer for establishment of, on lumber and forest products from Cybur, Miss., on the Cybur, Gulf & N. W. R. R. to destinations south of the Ohio River, no higher than those applicable from Picayune, *Held*, Rates applicable from Picayune not found to be maximum rates for application from Cybur. Rates charged found unduly prejudicial, and non-prejudicial joint rates required to be established. *Cybur Lumber Co. v. N. O. & N. E. R. R. Co.* 268 (273).

Defendants required to establish through routes and joint rates on lumber commodities from certain Louisiana and Arkansas points to Paducah via either Cairo or Memphis, which must not exceed present rates maintained on like commodities to Cairo. *Paducah Board of Trade v. I. C. R. R. Co.* 537 (543).

Respondents required to establish joint through rail-lake-and-rail rates from St. Louis to eastern basing points and points taking the same rates via Chicago and the Great Lakes Transit Corp. wherever there are joint through lake-and-rail rates from Chicago to the same points. Amount of such rates not determined. *Grain Products Rates via Great Lakes*, 550 (560).

Defendants required to establish through routes and joint rates with Inland Nav. Co., a barge line on the Mississippi River between St. Louis and Memphis and New Orleans, no higher than those participated in, on traffic routed all rail via St. Louis or East St. Louis between the same points. *Inland Nav. Co. v. W. Ry. Co.* 588 (594).

Proposed cancellation of, to Jackson, Meridian, Natchez, and Vicksburg, Miss., Baton Rouge, New Orleans, Port Chalmette, and Sikeston, Mo., on grain and products from points in southeastern Missouri on the I. M. by way of Cairo and Memphis, and the I. C. and Y. & M. V. railroads, rendering applicable higher combination rates, found justified. *Grain from Missouri Points*, 737 (740).

THROUGH TRAFFIC.

The shipper, consignee, or owner of a shipment can not treat the different stages or steps of the completed movement of the traffic as a single unit for some purposes and as separable or local movements, in part, for other purposes. *Memphis Merchants Exchange v. I. C. R. R. Co.* 373 (389).

TON-MILE REVENUE. *See also* Averages; Car-Mile Earnings; Earnings.

Blackstrap: Ton-mile earnings on blackstrap to Chicago and rate points from Gulf ports are higher than those yielded by the rates to St. Louis. *Scully Syrup Co. v. A. G. S. R. R. Co.* 567 (570).

Coal: Ton-mile revenue on bituminous coal to La Crosse, Wis., from West Virginia and Illinois mines, shown. *La Crosse Shippers' Assn. v. C. M. & St. P. Ry. Co.* 605 (609, 613).

Coal and coke: Earnings per ton-mile on coal and coke from Colorado and New Mexico to Texas & Pacific points for years 1915 and 1916 shown. *Coal and Coke from New Mexico Points*, 681 (684).

Dairy products: Measured by the test of revenue return per ton-mile of service the present haulage rates on dairy products in official classification territory are high. *National Poultry, Butter & Egg Assn. v. B. & O. S. W. R. R. Co.* 392 (407).

Dairy products: Net earnings per ton-mile on dairy products by the C. & N. W. are 18.17 mills, or over twice the ton-mile earnings on all carload freight, without making any deduction for loss and damage claims. *Rates on Dairy Products*, 700 (707-708).

TON-MILE REVENUE—Continued.

Dairy products: Average earnings per ton-mile from shipping stations in Kansas to St. Louis and Chicago, shown. *Id.* (714).

Lumber: Ton-mile revenue shown from Arkansas points to Memphis and various other destinations on lumber. Lumber from Arkansas City, Ark., 423 (426).

Machinery: Ton-mile revenue on, from St. Louis, Mo., to South Fort Smith, Ark., under rate charged and rate via the short line, shown. *Best-Clymer Mfg. Co. v. W. Ry. Co.* 81 (82).

Paper, printing: Ton-mile revenue on, from Franklin, N. H., to Augusta, Me., under rate charged and rate found reasonable shown. *International Paper Co. v. M. C. R. R. Co.* 159 (160).

Wheat: Table showing ton-mile revenue and divisions of joint through rates on wheat to New York and other eastern destinations via Lake Michigan and Lake Superior ports. *Bay State Milling Co. v. G. L. T. Corp.* 338 (344).

TRADE CONDITIONS. *See Commercial Conditions.*

TRAINLOADS.

Commission has never approved a tariff provision applicable to trainload lots. *Diamond Lumber Co. v. C., M. & St. P. Ry. Co.* 65 (66).

TRANSCONTINENTAL RATES.

It appears that the S. P. rail system, in conjunction with such a water line, can make better transcontinental rates and give quicker through service than any all-rail transcontinental route. *S. P. Co. Ownership of Atlantic S. S. Lines*, 168 (174).

TRANSIT ARRANGEMENTS.

In general: Request for the extension to Perkins,*Ind., of a transit arrangement on grain maintained at Terre Haute, Ind., not considered, as certain necessary parties are not named as defendants. *Cottrell v. C., T. H. & S. E. Ry. Co.* 195.

Billing: On shipments here considered neither the grain nor its products moved to the designated destinations but was disposed of locally or shipped to nontransit points, under these circumstances such inbound shipments became localized and therefore subject to the local rate from the point of origin to the milling points. *Melrose Milling Co. v. G. N. Ry. Co.* 741 (742).

Compression and concentration: L. & N. tariff provided that shipments of cotton originating on its line might be stopped at Montgomery, Ala., for, and reshipped at through rates from origin to final destination, provided shipments arriving at Montgomery during 12 months' period ending August 31, 1915, were shipped out on or before that date, *Held*, Alleged discrimination has been removed and record affords no basis for order requiring retroactive extension of time limit. *Montgomery Cotton Exchange v. L. & N. R. R. Co.* 197.

Grinding: Rates on glass sand in carloads from Oregon, Ill., to Silica, Ohio, there ground and reshipped to Zanesville, Ohio, not shown to be unreasonable, discriminatory, or prejudicial. *National Silica Co. v. T., A. & W. Ry. Co.* 63.

Milling:

Local rates charged on wheat to and from Grand Rapids, the milling point, on shipments from Michigan and Indiana points to points south of the Ohio River restricted from transit arrangement by tariff, found unreasonable to extent that they exceeded rates to points named in transit tariff. *Valley City Milling Co. v. G. R. & I. Ry. Co.* 75 (76).

TRANSIT ARRANGEMENTS—Continued.**Milling—Continued.**

Milling service on rice from all rice-producing points in Texas, and in Louisiana west of the Mississippi River, to interstate destinations, ordered restored. Charge applied when arrangement was in effect not found unreasonable. *Southern Rice Growers' Asso. v. T. & N. O. R. R. Co.* 90 (96).

The significant thing about a milling-in-transit arrangement is its tendency to place the miller at an intermediate point on a more nearly equal footing with the miller at the producing point *Id.* (96).

Combination rail-lake-and-rail rates on wheat from Minneapolis to complainants' mills in southern Minnesota and southwestern Wisconsin, there milled in transit and sent through Milwaukee to New York, etc., not shown to be unreasonable or unduly prejudicial, compared with rates via Duluth. *Bay State Milling Co. v. G. L. T. Corp.* 338 (342).

Practice of defendants in charging intrastate rates on grain originating in Illinois to Cairo and the reshipping rate thence to destinations in southeastern Carolina and Mississippi valley territories, found to have been unlawful. *Memphis Merchants' Exchange v. I. C. R. R. Co.* 378 (391).

Surplus billing: Defendants' cancellation of surplus billing not representing grain or its products actually stored in transit on their lines not found unreasonable or unduly prejudicial. *Melrose Milling Co. v. G. N. Ry. Co.* 741 (743).

TRANSPORTATION CONDITIONS.

Transportation conditions in the territory south of the Ohio River justify somewhat higher rates than those prevailing north of the river. *Barytes from Tennessee*, 334 (337).

TWO FOR ONE.

For the transportation of sheep, carriers should furnish the equipment ordered within a reasonable time or supply two cars at the rate and minimum weight attached to the car ordered. *Swift & Co. v. C., B. & Q. R. R. Co.* 56 (58).

Proposed elimination of two-for-one rule in connection with shipments of cooperage not justified. *Western Trunk Line Rate Increases*, 481 (493).

TWO-LINE HAUL.

As present class rates between Memphis and Arkansas points, upon which the prescribed distance scale is based, apply over one, two, and three line, no arbitrary will be allowed where the haul is over two or more lines. *City of Memphis v. C., R. I. & P. Ry. Co.* 121 (124).

Rate for a two-line haul may properly be higher than the rate for a one-line haul. *Northwestern Cooperage & Lumber Co. v. M., St. P. & S. S. M. Ry. Co.* 629 (632).

UNDERCHARGES.

May be waived. *Rosenblum v. B. & M. R. R.* 435 (437); *Graves Coal & Coke Co. v. St. L. & S. F. R. R. Co.* 579 (580).

Found to exist. *Baxter & Co. v. F., A. & G. R. R. Co.* 633 (634).

UNLOADING CHARGES. See Handling and Wharfage Charges.**VALUE OF COMMODITY.**

Asphalt: Value of imported asphalt ranges from \$17.50 to \$25 per ton, *Western Trunk Line Rate Increases*, 481 (484).

Chain hoists: Value and weight of chain hoists, wooden pulley or tackle blocks shown. *Industrial Traffic Asso. v. B. & O. R. R. Co.* 729 (730).

VALUE OF COMMODITY—Continued.

Coal ashes, cinders, and foundry dirt are articles of little or no intrinsic worth. Class rates applied were out of proportion to rates ordinarily applied on these articles. *Du Pont de Nemours Powder Co. v. P. & R. Ry. Co.* 1 (2, 3).

Cotton goods: Relative value of sheetings, gingham, yarn, etc., shown. *Cannon Mfg. Co. v. S. Ry. Co.* 625 (626).

Dairy products and beef: Table showing the average wholesale prices for years 1890 to 1915. Rates on Dairy Products, 700 (706).

Iron and steel: Increase in price of pig iron, bar iron, and billets from 1904 to 1916. *Eastern Export Iron and Steel Case*, 5 (7).

Lumber, spruce: Increase in value of, from 1893 to date of hearing, shown. *New England Lumber Rates* (No. 2), 641 (642, 653).

Plaster, cement: Average value about \$3.80 per ton and average carload worth approximately \$73 at point of origin. *Cement-Plaster from Plasterco, Tex.*, 615 (617).

Sand: Molding sand is worth from 70 cents to \$1.20 per ton, and building sand from 50 to 75 cents per ton, while some building sand is worth only 35 cents per ton. *Molding Sand to Nashville, Tenn.*, 108 (110).

VEGETABLES.

Onions usually move in stock cars, while vegetables other than potatoes and onions move regularly in refrigerator cars and usually under refrigeration. *Fruits and Vegetables*, 291 (325).

VOLUME OF TRAFFIC.

The movement of wool through New York is estimated at 10,000,000 pounds annually and the larger part of it goes to Boston. *Boston-New York Proportional Rates* (No. 2), 203 (208).

Total movement of coal and coke from the Connellsville and Reynoldsville districts, Pa., for year ended June 30, 1915, shown. *Buffalo Union Furnace Co. v. B. & S. R. R. Corp.* 218 (221).

Tonnage of various commodities transported by the Canadian Pacific Railway, shown. *New England Lumber Rates* (No. 2), 641 (650).

Dairy products: Table showing the increased movement of dairy products from points in Kansas and Nebraska from 1880 to 1910. Rates on Dairy Products, 700 (705).

VOLUNTARY REDUCTION. See Reduction in Rates (By Carriers).**WALL BOARD.**

Value, use, and process of manufacture, shown. *Wall Board Rating*, 189 (190).

WAR IN EUROPE.

Countries from which competition came are now at war, and are said to be confining themselves mainly to contracts for their own governments. *Eastern Export Iron and Steel Case*, 5 (7).

Since outbreak of war the export business in iron and steel has grown by leaps and bounds. *Id.* (7).

Extraordinary conditions attend the marketing of cotton on account of. *Montgomery Cotton Exchange v. L. & N. R. R. Co.* 197.

Prior to European war the greater portion of the supply of barytes was imported from Germany, and there was no movement of crude barytes from the producing districts to eastern points. *Barytes from Tennessee*, 834 (835).

Higher war rates have lured a number of boats from the lakes to the ocean. *Cadillac Lumber Exchange v. A. A. R. R. Co.* 636 (637).

WATER COMPETITION. See Competition (Water).

WEAK LINES.

Brooksville Railroad is a weak line and was built to hold county seat of Bracken County, Ky., at Brooksville. Coal to Brooksville, Ky., 115, 116.

WEIGHT.

Estimated: Increase in estimated weights on fresh fruits and vegetables from points east of the Mississippi River found justified. Fruits and Vegetables, 291 (316-317).

WHARFAGE CHARGES. *See* Handling and Wharfage Charges.

WITNESS. *See* Service.

ZONE RATES.

Rates on certain classes from Hutchinson, Kana., to points on the E. P. & S. W. R. R. in New Mexico divided into three zones, each zone taking a certain differential under Kansas City. Hutchinson Traffic Bureau v. C., R. I. & P. Ry. Co. 689 (694).

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